



TREVOR DEAN

Crime and Justice in Late Medieval Italy

CAMBRIDGE

CAMBRIDGE

www.cambridge.org/9780521864480

VISIT...

LANZAROTE
Caliente.COM

This page intentionally left blank

CRIME AND JUSTICE IN LATE MEDIEVAL ITALY

In this important new study, Trevor Dean examines the history of crime and criminal justice in Italy from the mid-thirteenth to the end of the fifteenth century. The book contains studies of the most frequent types of prosecuted crime such as violence, theft and insult, along with the rarely prosecuted sorcery and sex crimes. Drawing on a diverse and innovative range of sources, including legislation, legal opinions, prosecutions, chronicles and works of fiction, Dean demonstrates how knowledge of the history of criminal justice can illuminate our wider understanding of the Middle Ages. Issues and instruments of criminal justice reflected the structure and operation of state power; they were an essential element in the evolution of cities and they provided raw material for fictions. Furthermore, the study of judicial records provides insight into a wide range of social situations, from domestic violence to the oppression of ethnic minorities.

TREVOR DEAN is Professor of Medieval History at Roehampton University. His recent publications include *Crime in Medieval Europe* (2001) and *The Towns of Italy in the Later Middle Ages* (2000), and he has written numerous articles on crime and justice in late medieval Bologna.

CRIME AND JUSTICE IN LATE MEDIEVAL ITALY

TREVOR DEAN



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press

The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org

Information on this title: www.cambridge.org/9780521864480

© Trevor Dean 2007

This publication is in copyright. Subject to statutory exception and to the provision of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published in print format 2007

ISBN-13 978-0-511-34921-8 eBook (EBL)

ISBN-10 0-511-34921-1 eBook (EBL)

ISBN-13 978-0-521-86448-0 hardback

ISBN-10 0-521-86448-8 hardback

Cambridge University Press has no responsibility for the persistence or accuracy of urls for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

*In memory of
Philip Jones,
1921–2006*

Contents

<i>Acknowledgements</i>	<i>page</i> viii
<i>List of abbreviations</i>	ix
Introduction	I
PART ONE: SOURCES	
1 Trial records	17
2 Chronicles	52
3 Fiction	72
4 Statute law	84
5 <i>Consilia</i>	95
PART TWO: DESCRIPTION AND ANALYSIS	
6 Insult and revenge	113
7 Sex crimes	135
8 Potions and poisons	155
9 Violence	168
10 Theft	182
Conclusion	200
<i>Bibliography</i>	204
<i>Index</i>	221

Acknowledgements

I am very grateful to the following institutions for providing the funding and/or time that enabled this book to be researched and written: the Leverhulme Trust, for a Research Fellowship; the British Academy, for a Small Research Grant; and the School of Arts, Roehampton University, for a sabbatical semester. The archives and libraries in Bologna, Lucca, Modena, Reggio and Savona provided their usual efficient and helpful services. David Chambers kindly gave me access to some material from Mantua. Sarah Blanshei helpfully discussed with me criminal justice in Bologna. I would also like to thank Dr Stephen Bowd, Dr Fiona McHardy and Dr Magnus Ryan for kindly reading and commenting on various chapters of this book. The anonymous Cambridge University Press reviewer also made some useful comments, for which I am grateful.

Abbreviations

The following abbreviations are used in the footnotes for references to archives in Italy:

ASBo	Archivio di Stato, Bologna
ASLu	Archivio di Stato, Lucca
ASMn	Archivio di Stato, Mantua
ASMo	Archivio di Stato, Modena
ASPi	Archivio di Stato, Pisa
ASRe	Archivio di Stato, Reggio Emilia

Introduction

The history of criminal justice in the later Middle Ages is important for (at least) two reasons. First, because official justice was present across many areas of life – a major component in the power of states and ruling classes, a significant presence in cities (lawyers, police, court officials, public punishments), a source of material for fiction-writers and painters – and this makes it vital for a wider understanding of the period. Secondly, because of the range of social situations and problems that judicial records give us access to: not just the everyday conflict of insult and injury, but also the oppression of ethnic minorities (Jews, slaves), the frequency of domestic violence, the oppression of servants in urban households, the criminal responsibility of children and the insane, as well as the more colourful cases of skilful thieves, sacrilegious sex and inventive tricksters. The combination of the exotic and the quotidian in one source is hard to resist.

The last three or four decades of the twentieth century saw a great increase of interest among historians across Europe in issues of crime and criminal justice. In general terms, the motivation for this came first from ‘history from below’ and the unrivalled access to lower-class experience that judicial archives afforded. A secondary impulse lay in the developing history of the state and its institutions of repression.¹ These were later joined, though not necessarily reinforced, by ‘microhistory’ and the historiographical desire to reveal the possibilities for individual choice, for ‘negotiation’ and strategy, in relations between individuals and power. Though the level and extent of interest has varied among the countries of Europe, it was most advanced in England, France and Italy. In England there are already numerous works that attempt to survey the many different aspects of criminal justice, from legislation to punishment; while in France there is the incomparable study of pardons by Claude Gauvard (which is much more than a study of

¹ A. Zorzi, ‘Giustizia criminale e criminalità nell’Italia del tardo medioevo: studi e prospettive di ricerca’, *Società e storia*, 46 (1989), pp. 923–5.

pardons), as well as several general books.² But for Italy there is no such survey: this is one effect of the enduring localism of Italian historiography. This book attempts to fill that gap.

My own trajectory towards the study of crime derived from two impulses. One was an existing interest in comparative history: my first publications, though centred on Ferrara, also compared social developments there to those in France and England. In the mid-1980s, I also became aware of the historian Edoardo Grendi drawing the attention of his Italian colleagues to what was happening 'over the Alps and beyond the Channel in the incipient area of the history of criminality'.³ The second factor was more broadly historiographical, part of a wide trend, not just a personal choice: a turning away from the history of the politically and socially dominant, on which I had started in the 1970s, to that of the politically and socially dominated. This is an aspect of what Alison Brown, in a different context, has called the movement to 'de-civilise' the Renaissance,⁴ a trend that has produced a picture of Renaissance society as one that confined and oppressed women, that legalised and permitted slavery, that was increasingly anti-semitic, that despised peasants, and that punished same-sex relationships.⁵ Together, these factors led me to shift both the locus and the focus of my research as I followed the greater abundance of documentation: from the study of a princely state to that of a republic, from political and social institutions to law, justice and crime, from Ferrara to Bologna (and more recently to Lucca).

That shift also brought to the fore a need to reflect more systematically on the nature of the judicial sources used in the history of crime. The main issue is that of coerced speech. Marc Bloch in *The Historian's Craft* distinguishes between two categories of historical document: intentional evidence and unintentional. The former was composed to influence contemporary or future opinion; the latter was intended for an audience of just one reader or for no earthly audience at all.⁶ Another French historian, Arlette Farge – a

² See the bibliographical note in my *Crime in Medieval Europe*.

³ E. Grendi, 'Per lo sviluppo della storia criminale', *Quaderni storici*, 15 (1980). The quotation comes from M. Sbriccoli, 'Giustizia negoziata, giustizia egemonica. Riflessioni su una nuova fase degli studi di storia della giustizia criminale', in *Criminalità e giustizia in Germania e in Italia*, ed. M. Bellabarba, G. Schwerhoff and A. Zorzi (Bologna and Berlin, 2001).

⁴ A. Brown, 'De-civilizing the Renaissance', *Bulletin of the Society for Renaissance Studies*, 15:1 (1997).

⁵ As evidenced in the work of, for example, C. Klapisch-Zuber, *Women, Family, and Ritual in Renaissance Italy* (Chicago and London, 1985); M. Rocke, *Forbidden Friendships: Homosexuality and Male Culture in Renaissance Florence* (New York and Oxford, 1996); S. A. Epstein, *Speaking of Slavery: Color, Ethnicity and Human Bondage in Italy* (Ithaca and London, 2001); S. Cohn, *Creating the Florentine State: Peasants and Rebellion, 1348–1434* (Cambridge, 1999), among many others.

⁶ M. Bloch, *The Historian's Craft* (New York, 1953), pp. 60–1.

historian of crime in eighteenth-century Paris – uses this distinction to argue for the uniqueness of judicial records as a historical source: unlike a printed text that is consciously structured to produce an effect, the judicial archive preserves in its statements, confessions and depositions traces of lives that did not choose to be narrated in this way, which are coerced, confronted by the realities of police power and repression. They deliver what would not have been said, had some event not disturbed the peace of the locality. Reading these voices, she says, is like lifting a veil, disclosing a few moments in the lives of ordinary people, rarely visited by history.⁷ And in lifting the veil, historians should beware of appropriating what they find. Edward Muir and Guido Ruggiero, in their volume *History from Crime*, suggest, in contrast to the clichéd comparison of historians to judges, that we should instead consider history as a crime and historians as criminals.⁸ And what crimes do historians commit? Chiefly theft: expropriating judicial secrets and appropriating the past, ‘absconding with the words of others to make their own classifications, to write their own narratives’. The coerced speech of people otherwise unknown thus brings with it a whole series of problems of interpretation (on which, see below, pp. 31, 191–2).

These thoughts on how historians often present themselves to their public – the stress on revelation – have particular significance in the history of crime and criminal justice, because of the nature of judicial sources.⁹ Arlette Farge’s small volume on working in the (Parisian) judicial archive explores some major themes in reading and using court records. She makes three main points. First, she draws attention to the ‘reality effect’ that this type of documentation creates, the sense of being in touch with living people; secondly, she warns of the traps and problems that the documentation sets for us; and, thirdly, she gives examples of the ways in which, nevertheless, we can use the riches of the judicial archive. It is because the judicial archive ‘snatches from obscurity countless inarticulate people, summoned to explain themselves’, it is because it preserves ‘fragments of life dragged from the crowd’ that it captivates the reader and creates the impression of giving access to real life.¹⁰ However, the ‘reality effect’ fades, ‘the mirage does not last’, and we have to face the twin problems of interpreting – asking questions of – this material, and then finding something to do with it.¹¹ The first step is to recognise that the speakers in these records are not

⁷ A. Farge, *Le goût de l'archive* (Paris, 1989), pp. 12–13.

⁸ *History from Crime*, ed. E. Muir and G. Ruggiero (Baltimore and London, 1994), pp. vii–viii

⁹ J. Arnold, ‘The historian as inquisitor: the ethics of interrogating subaltern voices’, *Rethinking History*, 2 (1998), pp. 381, 385.

¹⁰ Farge, *Le goût de l'archive*, p. 36. ¹¹ *Ibid.*, p. 19.

speaking directly to us at all: the version that we have – of their speech and of their actions – is that of the authorities, of the court and the clerk to the court. Not recognising this is the error (if error it was) made by Le Roy Ladurie in his great work on Montaillou, the heretical village investigated by an inquisitor in 1318. Ladurie used the words of the villagers as if they were spoken to him, a sort of time-travelling ethnographer; he marginalises and forgets the figure of the inquisitor and the context in which the words were spoken. As Renato Rosaldo put it, Ladurie separates ‘the data from the instrument through which they were collected’.¹² There can be theoretical justification for this operation: Paul Ricœur writes of the archive as the place where words are detached from their original speaker and his or her audience – Ricœur creates the figure of the archive as one giant orphanage – and argues that without either speaker or audience, those words become semantically free, liberated to take on new meanings.¹³ Now, at one level, this is unimpeachable – signifiers after all can have any number of signifieds – but part of history writing is precisely to restore some identity to speaker and audience in order to limit the range of meanings, and to anchor the text. And so it is that historians using court records have drawn attention not only to the likelihood of the use of torture, but also to the court-room context: even if the words of the accused and witnesses were not inflected by pain, they were still articulated by the weak before the powerful. Farge sees in such words the working of adjustments between the self, the social group and power. Speech as recorded is caught in the act of making those adjustments, in a desire to convince its audience.¹⁴ The next problem is what to do with the profusion of material in the judicial archive. As Farge says, this archive miniaturises the historical object, it offers ‘un monde morcelé’, a profusion of imperfect, incomplete individual narratives, and yet such fragments of individual lives can connect to wider collective themes, and small events can reveal social identities, forms of sociability, ways of perceiving and communicating.¹⁵ In other words, they offer something more than, and something different from, the mere ‘history of crime’.

Writing the history of medieval (as opposed to eighteenth-century) crime faces a range of additional problems. Zorzi has argued that studies of criminality in medieval Italy – as opposed to studies of criminal law and criminal justice – have remained few for a variety of methodological reasons.¹⁶ First, the fact that crime is accessible only through trial documents, which raises

¹² R. Rosaldo, ‘From the door of his tent: the fieldworker and the inquisitor’, in *Writing Culture*, ed. J. Clifford and G. F. Marcis (Berkeley, 1987), p. 79.

¹³ P. Ricœur, *La mémoire, l'histoire, l'oubli* (Paris, 2000), pp. 209–11.

¹⁴ Farge, *Le goût de l'archive*, pp. 39–40. ¹⁵ *Ibid.*, pp. 99, 101.

¹⁶ Zorzi, ‘Giustizia criminale’, pp. 957–8, 961.

issues of reliability in both qualitative and quantitative terms. Secondly, the difficulties of placing trial documents into the context of local penal strategies and practices, and of connecting crime with underlying structures of economic, social and political relations. Gauvard too points to methodological obstacles. The first obstacle is qualitative: more actions were punished than were defined as criminal by the law. The second is quantitative: the sources, though abundant, are diverse and discontinuous, and so cannot be compared with each other. The relation of prosecuted crime to total crime is uncertain: individuals and communities selected crimes to denounce to the authorities, while private pacification settled some disputes. As a result, the records of official justice preserve just one part of the 'economy of justice'.¹⁷ Records of official justice tell us as much about judicial procedures as about the crime and the criminal. 'No source tells of the crime alone, but each gives a discourse on the crime.'¹⁸ The problem for the historian therefore becomes twofold: analysing sources while respecting their typology; and distinguishing the reality of crime from the descriptions it gives rise to (as the image of crime varies according to source).¹⁹ Gauvard's solution to this conundrum was to focus on one type of source, namely royal pardons. My response is different in turn.

This book attempts to address these problems by adopting and extending a structure also used by some other recent works of Italian social history: Cohn on peasants, for example, or Epstein on slaves.²⁰ This is to build up different, but complementary, pictures from discrete classes of documentation. In Cohn's case it was chronicles, criminal records and government measures, and in Epstein's names, laws and contracts. Here the five types of document will be legislation, prosecutions, *consilia* (opinions of learned lawyers on specific cases), chronicles and fiction. Each source opens a different window on the problem, though not necessarily on past 'reality', as these texts are all shaped by the conventions of their genres. The fragmentation of viewpoint in Part One owes something to microhistory and its literary analogues,²¹ especially their refusal to smoothe over gaps and disparities in the evidence. Microhistory developed as a critique of a type of history in which 'different pieces of evidence, written from various (sometimes even conflicting) perspectives, are combined in order to build up

¹⁷ C. Gauvard, *'De grace especial': Crime, état et société en France à la fin du Moyen Âge* (Paris, 1991), pp. 6–9.

¹⁸ *Ibid.*, p. 9. ¹⁹ *Ibid.*, p. 15.

²⁰ Cohn, *Creating the Florentine State*; Epstein, *Speaking of Slavery*.

²¹ C. Ginzburg, 'Proofs and possibilities: in the margins of Natalie Zemon Davis' *The Return of Martin Guerre*', *Yearbook of Comparative and General Literature*, 37 (1988), pp. 120–1; Ginzburg, 'Microhistory: two or three things that I know about it', *Critical Inquiry*, 20 (1993), pp. 23–4, 30.

a smooth, homogeneous narrative'. Instead, each piece of historical evidence needs 'a specific interpretive framework, related to the specific code according to which the evidence has been constructed'.²² In Part One, each chapter deals with one type of documentation, in the light of both the problems the source poses and the information it provides. In Part Two, however, I do attempt to smoothe over gaps and disparities in the evidence, in order to examine a range of crimes or behaviours, and to offer some generalisations. Material here is drawn chiefly from cities outside the historiographical duopoly exercised by Florence and Venice: from the archives in Bologna, Mantua, Modena, Reggio, Savona and Lucca; and from published documents for the whole of late medieval Italy, from the duchy of Savoy and the Venetian *terraferma* to the kingdoms of Naples and Sicily. From the thousands of printed volumes of statutes, I have focused on a range of cities, large and small, across most areas of Italy, including the South and Sicily. I have tried to mirror this geographical spread in the selection of chronicle material. I have used the printed collections of *consilia* of the leading legal consultants, supplemented by some minor ones, and the best-known collections of fictional tales or *novelle*. Omissions, of course, there are. At the archival level, several of these omissions are compensated by the availability of good secondary studies.

There may be critics who will argue that it is hazardous, if not misleading, to put together material in this way, without due regard to the institutional, social and contextual differences between, say, an insult delivered in the street in Savona, and one uttered in Palermo (on which see below, pp. 113–16). The answer lies in pointing to the rationale and benefits of comparative history. Marc Bloch's essay on this subject, first published in 1928,²³ remains an influential statement of the values and dangers of this method, and it seems worthwhile, at the beginning of this book, to rehearse his distinctions and arguments, especially as they continue to be used by those who advocate the comparative method.²⁴ Bloch pointed to the substantial benefits of comparative analysis: whether one is looking for differences or similarities, it can both reveal problems and suggest explanations beyond the 'maze of little local facts' and the 'exclusively local'. Only comparison

²² C. Ginzburg, 'Checking the evidence: the judge and the historian', *Critical Inquiry*, 18 (1991), pp. 83–4.

²³ 'A contribution towards a comparative history of European societies', in *Land and Work in Mediaeval Europe: Selected Papers by Marc Bloch*, trans. J. E. Anderson (Berkeley and Los Angeles, 1967), p. 45.

²⁴ For example, C. N. Degler, 'Comparative history: an essay review', *Journal of Southern History*, 34 (1968); R. Grew, 'The case for comparing histories', *American Historical Review*, 85 (1980); G. M. Frederickson, 'Comparative history', in *The Past before Us: Contemporary Historical Writings in the United States*, ed. M. Kammen (Ithaca and London, 1980).

outside the conventional boundaries of a unit of analysis can reveal features that seem, in purely local study, to be natural developments. Later writers have followed Bloch here. Historians might compare the similar in order to produce generalisations and syntheses, theories and models; or they might compare the dissimilar in order to make new discoveries, illuminate special features of the unit analysed.²⁵ The dangers have also been reiterated and extended by subsequent authors. Bloch noted the barriers that inhibit the writing of comparative history: each group of local historians asks different questions within units that might seem comparable,²⁶ and a historian from outside has 'to grope his way all of a sudden in what seems to be a new world'. The comparative historian is thus at a disadvantage compared to those with local expertise, those who know the documents and their associated historiography much more intensively. Since Bloch wrote, this disadvantage has undoubtedly grown, as specialisation has advanced and deepened. Given that comparison seems to require 'equal expertise in at least two societies, languages, traditions of record-keeping and interpretation', it is unsurprising that few historians are willing to abandon the benefits of specialisation.²⁷ Moreover, the difficulty of comparison has been underlined at a theoretical level: are the units chosen for comparison typical of the broader societies of which they are part? Are the common features actually important for understanding the working of the compared units?²⁸ This, however, does not make comparison an impossible path, because all historians are faced with this problem of dealing with the difference in viewpoint between themselves and the actors in the past who are the object of their study.

I have tried in this book to draw on the benefits of comparative history, while hoping to avoid the dangers. I have certainly not made myself equally expert in the history of all the cities and regions covered in this book, and I hope that local historians, in judging my effort to use material with which they are more familiar, will remember the comparative historian's answer, as formulated once again by Marc Bloch: local historians have an advantage of expertise over me, but I have one advantage over them, which is that I have read works on similar matters in other places and have tried to draw inspiration from them.²⁹

²⁵ Ibid., p. 458; F. Redlich, 'Toward comparative historiography: background and problems', *Kyklos*, 11 (1958), pp. 378, 382.

²⁶ Bloch, 'Contribution', pp. 73–4. ²⁷ Grew, 'The case for comparing histories', p. 767.

²⁸ R. F. Berkhofer, *A Behavioral Approach to Historical Analysis* (New York and London, 1969), pp. 254–6.

²⁹ Bloch, 'Contribution', p. 51.

This leaves the question of how to write such a history, of what material to select and what words to use. It might be said, for example, that the material – sex, slander and bizarre atrocities – lends itself to snappy and exciting writing. This, however, is to fall into the ‘sensationalist trap’, and twice over. The first part of the trap lies, as Sam Cohn put it, in ‘quarrying judicial records for those activities least represented in them’.³⁰ This is a fault that mars the otherwise excellent collection of Florentine documents assembled by Gene Brucker: over half of his documents deal with crime in its various forms, from unlawful killing (homicide, infanticide, uxoricide, etc.), through sex crimes (rape, incest, pimping, sodomy) to forgery, fraud, gambling and blasphemy.³¹ However, representativeness is sacrificed for variety: not only are these crimes among the least frequently prosecuted, but the commonest crimes (assault, insult) find no place in Brucker’s picture of Renaissance Florence – a historiographical instance of the ‘law of opposites’ found in modern reporting of crime.³² The second part of the sensationalist trap lies in allowing an ‘interest in telling spicy tales’ to dominate (as in the work of Guido Ruggiero).³³ ‘Too often’, David Gentilcore has written, ‘social historians, working from criminal records, plunge into the exciting, dramatic world of the depositions without considering their particular tribunal’s effects on shaping their structure and content.’³⁴ As Claude Gauvard has compellingly argued, historians who have sought out sensational material and described it using impressionistic methods have created and maintained an image of the Middle Ages as *the* age of violence, when latent aggression could suddenly flare up, and when the population lived in constant fear of bandits and highway robbers.³⁵

Interest in judicial sources still turns to some degree on the ‘expressive richness and evocative power’ of crime reporting.³⁶ In one sense, it is difficult entirely to get away from this without deliberately writing dull history. Yet Andrea Zorzi is quite right to be dissatisfied with the existing state of research. Methods have certainly changed over the past fifty years, but they still leave something to be desired. As an example of the episodic and sensational take Pontieri’s depiction of the breakdown of order in mid-fifteenth-

³⁰ S. Cohn, ‘Criminality and the state in Renaissance Florence, 1344–1466’, *Journal of Social History*, 14 (1980), p. 211.

³¹ G. Brucker, *The Society of Renaissance Florence: A Documentary Study* (New York, 1971).

³² R. Reiner, S. Livingstone and J. Allen, ‘From law and order to lynch mobs: Crime news since the Second World War’, in *Criminal Visions: Media Representations of Crime and Justice*, ed. P. Mason (Cullompton, 2003), p. 15.

³³ As noted in Chojnacki’s review of Ruggiero’s *Boundaries of Eros in Salmagundi*, 72 (1986), pp. 281–3.

³⁴ Review of Roche, *Forbidden Friendships*, in *Social History of Medicine*, 11 (1998), pp. 506–7.

³⁵ Gauvard, *Crime, état et société en France*, pp. 1–2.

³⁶ Zorzi, ‘Giustizia criminale e criminalità nell’Italia del tardo medioevo’, p. 960.

century Calabria, which includes pilgrims left hanging naked from trees, criminals summarily slaughtered on a market-place, and friars whose genitals were burned when they failed to pay a prostitute.³⁷ An improvement on this is the simple counting of categories of crime, following cases through from initiation to conclusion: Verga was one of the first to practise this, on Milanese registers for the period 1385–1429, and later historians repeated the method for places such as Brescia and Sicily.³⁸ A further advance lay in comparing such elementary calculations with other data. One variety of this is to ask how far judicial practice followed statute law in imposing penalty.³⁹ Another – adopted by Ruggiero in his study of violence in Venice – is to set different social groups' participation in crime against their proportions in the population, and suggest explanations for the resulting pattern. Yet the debate over Ruggiero's methods has revealed the difficulty of putting this calculation into practice,⁴⁰ while his explanations get no further than attributing an assumed class character to behaviour: thus noble violence was related to honour, but for workers and marginals violence was a way of life, not part of a lifestyle, and was motivated by immediate problems in their daily struggle for survival.⁴¹

As in this case, historians have attempted (in Zorzi's phrase) to identify the ensemble of relations that contextualised criminal behaviour – the socio-economic, the political, the cultural – yet such explanations often remain rather general. The rise in the number of cases in Sicily in the 1480s is said to be due to demographic growth and to social disorder following epidemics and shortages.⁴² At Turin, the growth of violence in the fifteenth century was fed, we hear, by immigration, by the student population, and by the presence of the duke and his entourage.⁴³ General economic conditions at Montone (migration, taxation) created a social climate of insecurity and instability, determining high crime levels.⁴⁴ This reference to factors such as plague, famine, migration and taxation, and to elements of the local

³⁷ E. Pontieri, *La Calabria a metà del secolo XV e le rivolte di Antonio Centelles* (Naples, 1963), pp. 46–7.

³⁸ E. Verga, 'Le sentenze criminali dei Podestà milanesi 1385–1429', *Archivio storico lombardo*, 3rd ser., 16 (1901); G. Bonfiglio Dosio, 'Criminalità ed emarginazione a Brescia nel primo Quattrocento', *Archivio storico italiano*, 136 (1978); A. Giuffrida, 'Giustizia e società', in *Storia della Sicilia* (10 vols., Naples, 1977–81), vol. 3.

³⁹ G. S. Pene Vidari, 'Sulla criminalità e sui banni del comune di Ivrea nei primi anni della dominazione sabauda (1313–1347)', *Bollettino storico-bibliografico subalpino*, 68 (1970).

⁴⁰ See review by R. Finlay, *Journal of Interdisciplinary History*, 13 (1982–3), pp. 348–9.

⁴¹ G. Ruggiero, *Violence in Early Renaissance Venice* (New Brunswick, 1980), pp. 74, 104, III–12.

⁴² Giuffrida, 'Giustizia e società', p. 554.

⁴³ A. Barbero, 'Gruppi e rapporti sociali', in *Storia di Torino*, vol. 2, *Il basso Medioevo e la prima età moderna* (1280–1536), ed. R. Comba (Turin, 1977), p. 523.

⁴⁴ A. Bei, 'La giustizia penale a Montone alla metà del xiv secolo negli statuti del comune e nei registri giudiziari', *Bollettino della Deputazione di storia patria per l'Umbria*, 93 (1996), p. 64.

population such as students and courtiers, undoubtedly has some explanatory value, but it usually remains partial and conjectural. The problem is this: modern criminology distinguishes three levels of explanation of crime – the micro (the characteristics and social interactions of individuals), the intermediate (the characteristics of families and communities), and the macro (general economic and cultural conditions, systems of government and law).⁴⁵ Because of the nature of the medieval sources, the first two of these levels are largely, if not wholly, out of reach, irrecoverable. Hence the focus on more general causes.

This book does not entirely escape any of these problems in writing the history of crime – some colourful cases are examined, some general explanations are offered – but it does adopt a different approach, one that looks first at the discourses of crime present in five types of documentation, and then at the most important forms of prosecuted crime. The aim is not to argue for a new categorisation of crimes, or to attempt to offer new explanations of crime, but to write about crime in a new way, focusing on attitudes, representations and constructions. The material is first segregated according to type of source, and then integrated according to type of crime. No other study draws on such a range of material or uses it in this way.

In doing this, the chapters that follow aim to address a number of inter-related themes or questions. Is it possible to overcome the often-lamented gulf between legal history and social history, a gulf that reserves ideas and texts to jurists, and facts and records to historians?⁴⁶ What happens when we decentre the historiography of crime, moving away from Florence and Venice to other cities and different regimes? Is it possible to identify general or common patterns among the various polities of late medieval Italy? Are modern historians' categories (e.g. 'sex crime') as straightforward as they seem? How did the behaviour in question and its legal and judicial treatment evolve over the period?

It remains to justify the chronological range of this study, and to expound some basic features of the judicial systems of Italy. The period covered is that of the 'later Middle Ages' as commonly understood, in other words, from the late thirteenth century to the end of the fifteenth. It might be wondered whether criminality or criminal justice had any distinctive features in that period. The opening of the period certainly coincides with the proliferation of judicial records, yet the period as a whole witnessed significant changes in how crimes were defined, reported, tried and punished (some of these

⁴⁵ M. Morash, *Understanding Gender, Crime and Justice* (Thousand Oaks, 2006), p. 2.

⁴⁶ J.-C. Maire Vigueur, 'Giudici e testimoni a confronto', in *La parola all'accusato*, ed. J.-C. Maire Vigueur and A. Paravicini Bagliani (Palermo, 1991), p. 105.

changes are surveyed in Chapter 1). The repressive forces of the state grew in number and changed in quality: increased numbers of police officers, the militarisation of policing,⁴⁷ and greater staging of execution as a spectacle. There were changes in the law and in judicial practice, whether towards greater severity or greater leniency (see below, Chapters 7 and 10). There was a change in the social composition of cities and countryside, with the migration of slaves, Slavs and Jews (partly addressed in Chapter 7): though numerically small, these groups aroused anxieties out of all proportion to their numbers. And there were greater social disasters – especially the Black Death – which seem to have had impact on types and levels of criminality.⁴⁸

For most of the period, the cities of the centre and north of Italy shared a roughly similar judicial structure and similar judicial procedures. This was perhaps partly cause and partly effect of their subscribing to a similar system of hiring judges from a circulating pool of lawyers and noblemen. Commonly, the chief judge contracted with a city to serve it for a semester (six months) on certain terms and conditions, and to bring with him all the necessary subordinate staff. At the end of six months, his performance was reviewed (in a process called ‘syndication’). At that point his contract might be renewed or he would move on to another post. Sometimes judges would be appointed for more than six months, or would serve for less. Each judicial team would consist of a chief judge (Podestà), a number of subordinate judges, including one specifically for criminal justice, notaries and police agents. Supporting them would be civic officials, such as town-criers who summoned defendants to trial. Some cities hired just this one set of law-enforcers. Others hired parallel or subordinate sets. The most frequent of these was the Capitano del Popolo. His post was originally intended to handle cases involving members of the *popolo* (the middling artisan and commercial class), but in practice it is often difficult to distinguish between his caseload and that of the Podestà. Most cities also had judges for petty crimes in their subject towns and villages; some added police chiefs or bandit-catchers (*bargelli*) with specific competence across the countryside (*contado*). Whereas the post of Podestà was a relative fixture, these other posts appear and disappear. The tendency in the fifteenth century seems to have been for the Capitano del Popolo to fall into abeyance or to be abolished: in Florence, the post was terminated in 1502.⁴⁹

⁴⁷ A. Zorzi, ‘The judicial system in Florence in the fourteenth and fifteenth centuries’, in *Crime, Society and the Law in Renaissance Italy*, ed. T. Dean and K. J. P. Lowe (Cambridge, 1994), pp. 48–9.

⁴⁸ As discussed in Dean, *Crime in Medieval Europe*.

⁴⁹ L. I. Stern, *The Criminal Law of Medieval and Renaissance Florence* (Baltimore and London, 1994), pp. 124–5.

Cases came to the court of Podestà or Capitano by one of three methods: an accusation delivered by the injured party, or notification ('denunciation') by local district officials in city and *contado*, or *ex officio* action by the judge (see below, pp. 17–18). The injured party could choose whether or not to make an accusation, but district officials were obliged to report specific categories of crime within strict deadlines. Local communities in both city and *contado* were required to pursue, capture and deliver malefactors in their areas, while judges also took regular information from localities about persons of ill repute living there.

To this general picture there were exceptions. Florence in the fifteenth century gradually did away with the hiring of foreign lawyers as judges, and passed an increasing proportion of criminal cases to a small commission of citizens, the Otto di Guardia, or to new tribunals formed of leading citizens, not lawyers, with specific remits.⁵⁰ At the same time, the system of official denunciation of crimes atrophied there, and the posts of both Capitano and Podestà were eventually abolished. Venice did not employ foreign judges, but had two routes for cases to enter the criminal justice system: the Signori di Notte policed the city, apprehended malefactors and presented their cases to a three-man tribunal (the Giudici di Proprio); alternatively cases were referred (by victims or officials) for investigation to the state prosecutors, the Avogadori del Comun, who then presented their findings to the Council of Forty, who in turn voted on guilt and on penalty.⁵¹ Venice had a further committee, the Council of Ten, which, though principally concerned with state security, also came to deal with some serious crimes, such as sodomy.

Southern Italy and Sicily were rather different, in both structure and procedure. In the kingdom of Naples, there was a high court (under the Angevin rulers, two high courts), provincial courts under justiciars, and judges in towns and some baronial lands; under the Aragonese kings, from the 1430s, the high courts were unified and reformed, while the main point of change was the introduction of Spanish-style police officials, who could not just arrest criminals, but try and execute them as well.⁵² In fourteenth-century Naples, the use of inquisition was limited, general inquisitions were abolished, and the use of repute (*fama*) as proof was allowed only in special

⁵⁰ G. Antonelli, 'La magistratura degli Otto di Guardia a Firenze', *Archivio storico italiano*, 112 (1954); M. B. Becker, 'Changing patterns of violence and justice in fourteenth- and fifteenth-century Florence', *Comparative Studies in Society and History*, 18 (1976); Zorzi, 'The judicial system in Florence in the fourteenth and fifteenth centuries'.

⁵¹ Ruggiero, *Violence in Early Renaissance Venice*, pp. 21–9.

⁵² S. Kelly, *The New Solomon: Robert of Naples (1309–1343) and Fourteenth-century Kingship* (Leiden, 2003), pp. 138–71; Ryder, *Kingdom of Naples*, pp. 137–67.

circumstances. Accusation could be by the injured party only, torture was limited to cases of highway robbery and homicide, and composition (the negotiation of penalty) was explicitly permitted in non-capital crimes.⁵³ In Sicily there was a multi-level structure, a network of institutions, central and local, aristocratic and royal, ordinary and extraordinary, the balance among which changed over time according to varying relations of power among social groups on the island.⁵⁴ The central royal court (Regia Gran Corte) served as supreme court, hearing cases of treason and appeals from lower courts; the courts of the Captains in the towns acted as the first level of criminal justice. The latter courts combined a royal nominee (the Captain) with local appointees (judge/s and notary) – and their judicial decisions could be appealed to regional Justices (Giustizieri).⁵⁵ In the mid-fifteenth century, the reforms of the Aragonese King Alfonso marked a shift towards centralisation, and aroused complaints regarding the activities of special judicial ‘commissioners’.⁵⁶ In procedure, prosecution could be initiated only by the injured party (though inquisition for a few serious crimes was allowed after 1446, another of King Alfonso’s reforms), and composition could be negotiated at any stage between the defendant and the Crown.⁵⁷

⁵³ *Capitula regni Siciliae* (Naples, 1551), pp. 51, 52–3, 54–6, 59, 61, 91; E. Mazzaresse Fardella, ‘Aspetti della legislazione di Federico III d’Aragona re di Sicilia’, *Archivio storico siciliano*, 4th ser., 23 (1997), p. 53.

⁵⁴ B. Pasciuta, *In regia curia civiliter convenire. Giustizia e città nella Sicilia tardomedievale* (Turin, 2003), pp. 44–5; A. Romano, ‘Tribunali, giudici e sentenze nel “Regnum Siciliae” (1130–1516)’, in *Judicial Records, Law Reports and the Growth of Case Law*, ed. J. H. Baker (Berlin, 1989), pp. 230–42.

⁵⁵ Pasciuta, *Giustizia e città nella Sicilia tardomedievale*, pp. 48–58, 66–7.

⁵⁶ *Ibid.*, pp. 52–3.

⁵⁷ A. Ryder, ‘The incidence of crime in Sicily in the mid fifteenth century: the evidence from composition records’, in *Crime, Society and the Law in Renaissance Italy*, ed. Dean and Lowe, pp. 60–2; *Capitula regni Siciliae*, ed. F. Testa (Palermo, 1741), pp. 18, 25, 32, 109–10, 336–7.

PART ONE

Sources

CHAPTER I

Trial records

When writing the history of medieval crime, historians often have to rely on documentation that represents the end-product of a process: sentences or records of fines paid or to be collected. The disadvantage of this approach is that it cannot take account of the context within which those documents were produced. The records from some Italian cities, however, do permit a study of the whole process of trials, from initial denunciation through to sentence. Especially, they show different narrative levels: the primary level (which historians often ignore) is the narrative of the trial itself, and the secondary level (which historians often prefer) is the narrative of the crime. The aim of this chapter is to rescue the primary narrative, and to examine the secondary narrative within a comparative framework. First, though, we need to examine a third narrative, that which historians have created for the evolution of the trial system in the later Middle Ages.

NARRATIVE OF THE TRIAL SYSTEM

A standard view, in Italian legal history, of the development of the criminal trial traces a narrative of growing arbitrary power.¹ The starting point of such an account is the early thirteenth century, when there were already two modes of prosecution, by accusation and by inquest. These were subsequently modified in the context of the growth of public authority and urban criminality. Trial by accusation was an open, public debate, which had to follow certain prescribed forms, shared with civil litigation. The action was started by the delivery of an initiatory claim (*libello*). There were heavy penalties on an accuser who failed to prove his accusation. The right to accuse was limited to the injured party (or his/her heirs) and denied to Jews, heretics, the poor and the infamous. During the thirteenth century,

¹ G. Salvioli, *Storia della procedura civile e criminale*, in *Storia del diritto italiano*, ed. P. Del Giudice, vol. 3, pt 2 (Milan, 1927), pp. 347–62; cf. C. Wickham, *Legge, pratiche e conflitti: tribunali e risoluzione delle dispute nella Toscana del XII secolo* (Rome, 2000), pp. 28–30.

some of these restrictions were removed or relaxed: the *libello* was no longer required, and the penalties for failure were replaced with money-fines. The other limitations were bypassed through the development of denunciation. An obligation to denounce crimes was created: local officials in town and country were put under a duty to denounce to the urban Podestà all crimes committed in their districts; physicians and barber-surgeons were required to report all the wounds they treated; and for some serious crimes, denunciation was opened up to any member of the community. Whereas trial by accusation placed accuser and accused in direct, open dialogue, trial by denunciation could be based on anonymous information. Denunciation obliged the judge to initiate an inquisition.

Inquisition was the novelty. Judges could also inquire *ex officio*, without a named informant or complainant. In this case, the judge prosecuted on the basis of repute (*fama*) and of the unanimous 'clamour' of unnamed informants. In the words of the formula used, the ill fame of the suspect preceded his arrest: it derived from honest and trustworthy, not malicious, persons, and was reported to the judge not once but often. It was this type of inquisition that drew later condemnation, for example, that of the legal historian Salvioli in 1927: it was characterised, he said, by arbitrariness (*arbitrium*) and secrecy, with torture, with the names of witnesses kept secret, and with the defendant held in prison and able to present his defence only when the trial was almost over.

In the fourteenth or fifteenth centuries, the judicial power of the state made further advances, as mechanisms for anonymous denunciation were further developed, the law became more punitive, torture was increasingly used,² and the composition – settlement by private negotiation – of crimes was forbidden. At the same time, it has been widely acknowledged by those who have studied judicial records that this oppressive machine failed to deliver much publicly visible justice: few cases were concluded, and corporal and capital punishments were relatively rarely inflicted. As Verga lamented as early as 1901, 'the number of contumacious people is enormous'.³ This sort of view survives in comments such as that by Cherubini that medieval justice was 'fierce', but 'inefficient'.⁴

In the 1990s the contradiction between oppressive machinery and poverty of outcome was the basis for a more processual approach to criminal justice, in which the failure of a trial is seen not as a defect in the judicial system,

² E. Dezza, 'Gli statuti di Tortona', *Studia et documenta historiae et iuris*, 43 (1977), pp. 420–1; V. Piergiovanni, *Gli statuti civili e criminali di Genova nel Medioevo* (Genoa, 1980), p. 235; Ruggiero, *Violence in Early Renaissance Venice*, p. 29.

³ Verga, 'Le sentenze criminali dei Podestà milanesi 1385–1429', p. 130.

⁴ G. Cherubini, *Gente del medioevo* (Florence, 1995), p. 67.

but as the outcome of strategic decisions by the parties involved. This approach also draws on the rejection of the Grand Narratives by which the state receives legitimisation.⁵ It focuses on the continuing conflict between accuser and accused, of which the trial was a part, rather than assuming that the trial conclusively settled a conflict. What Vallerani calls the 'evolutionary paradigm' reduces 'the study of justice to a simple calculation of punitive efficacy, without considering the political function of public proceedings in containing conflicts'.⁶ Critique of this paradigm starts by collapsing the distinction between the different types of trial. In judicial documents, 'accusation' and 'denunciation' are used synonymously in the thirteenth century, we are told,⁷ while jurists had difficulty in establishing clear limits and functions for inquisition.⁸ This is a crucial part of the processual argument: if the differences between different types of prosecution can be denied, then the out-of-court relations between accuser and accused can be shown to control the in-court actions of both the parties and the judge. Moreover, inquisition was still conditioned by the actions of parties: pacification between them could interrupt and terminate an inquisition.

The second, equally vital argument is to stress the potential for the instrumental use of trials: even inquisitorial procedure could be used by parties as an instrument in their disputes, we are informed.⁹ This means that the label '*ex officio*' masks an ongoing conflict. Conversely, the capacity of inquisition to act as a repressive tool is minimised: the use of torture was rare, according to Vallerani.¹⁰ Finally, the outcomes of justice suggest that *arbitrium* was used selectively: no matter what the mode of trial, the vast range of corporal punishments available was not imposed; punishment was limited to crimes that threatened social equilibria (professional criminality, political crimes), and to criminals who lacked networks of social support (foreigners, migrants); everything else was 'concorded' with the support of the judicial authorities.¹¹ Public justice thus constituted a system for the

⁵ Wickham, *Legge, pratiche e conflitti*, pp. 30–1.

⁶ M. Vallerani, *La giustizia pubblica medievale* (Bologna, 2005), p. 13.

⁷ C. Cutini, 'Giudici e giustizia a Perugia nel secolo XIII', *Bollettino della Deputazione di storia patria per l'Umbria*, 83 (1986), p. 86; A. Bei, 'La giustizia penale a Montone alla metà del XIV secolo negli statuti del comune e nei registri giudiziari', *Bollettino della Deputazione di storia patria per l'Umbria*, 93 (1996), p. 41.

⁸ M. Vallerani, 'Conflitti e modelli procedurali nel sistema giudiziario comunale: i registri di processi di Perugia nella seconda metà del XIII secolo', *Società e storia*, 48 (1990), pp. 274–7.

⁹ Cutini, 'Giudici e giustizia a Perugia nel secolo XIII', p. 89.

¹⁰ Vallerani, 'Conflitti e modelli procedurali nel sistema giudiziario comunale', pp. 279–81.

¹¹ Bei, 'La giustizia penale a Montone', pp. 69–70; M. Vallerani, 'L'amministrazione della giustizia a Bologna in età podestarile', *Atti e memorie della Deputazione di storia patria per le provincie modenesi*, n.s., 43 (1992), pp. 301–2, 310; Vallerani, 'Conflitti e modelli procedurali nel sistema giudiziario comunale', pp. 289, 291–2.

mediation or containment of citizens' conflicts, not for the punishment of their transgressions. The fact that most accusations halt at an early stage in their judicial *iter* is not a sign of system failure, but indicates that recourse was had to the courts not to seek the reparation of a wrong, but to involve an adversary in a controlled confrontation, in which he was placed in a defensive position.¹² The action of the law-court is thus seen from the viewpoint of the parties, not that of the judge, and the action of the parties is interpreted as strategic: related not to the law and its transgression, but to opportunities for advantage within relations of conflict.

It is further argued that the ordinary means of resolving conflict was by self-regulation, using a range of practices, which included vengeance, mediation, arbitration and pacification. The penal activity of the law-courts, on the other hand, played only a minor role. The law, in any case, did not prohibit or prosecute vengeance, but recognised its positive value in limiting violence. The law intervened only to contain escalation of feuding or to facilitate peaceful solutions. Trials were only phases in conflicts, and did not serve to resolve them.¹³ Recourse to the courts is to be placed within a range of possible responses to conflict. Subject populations used, even appropriated, the state's judicial machinery. Most disputes were settled out of court, so that the function of a court-room trial was merely to assist in negotiated solutions, or to enable vendetta to be accomplished by banishing one of the parties, as bandits could be killed with impunity (see below, p. 104). There was no sharp division between formal and informal means of conflict resolution: the public authorities took part in mediation, pardons broke the progress of cases through the courts, penalties were reduced if peace was made between offender and victim. The practice of composing, rather than punishing, crimes was deeply engrained, and survived all prohibitions. Informal modes of conflict resolution were so extensive that they deserve the name 'justice', while the action of the courts was 'repression'.¹⁴

These are powerful and persuasive arguments, but they contain difficulties and problems which need to be recognised. First, it is important to note that legal historians who have adopted the processual approach tend

¹² Vallerani, 'L'amministrazione della giustizia a Bologna', pp. 304–5.

¹³ A. Zorzi, 'Conflits et pratiques infrajudiciaires dans les formations politiques italiennes du XIII^e au XVe siècle', in *L'infrajudiciaire du Moyen Âge à l'époque contemporaine*, ed. B. Garnot (Dijon, 1996), pp. 20, 25–8.

¹⁴ Bellabarba, 'Pace pubblica e pace privata', pp. 190–201; M. Sbriccoli, 'Giustizia negoziata, giustizia egemonica: Riflessioni su una nuova fase degli studi di storia della giustizia criminale', in *Criminalità e giustizia in Germania e in Italia*, ed. Bellabarba et al., pp. 349–50; M. Dinges, 'Usi della giustizia come elemento di controllo sociale nella prima età moderna', *ibid.*, pp. 285–292.

to study property disputes, not crime.¹⁵ Vallerani is one exception, but he works mainly on the thirteenth century, when inquisition was being created as a procedure, not on the fourteenth or fifteenth, when it was normal. Secondly, the range of choices open to such disputants – choice of mode of conflict, choice of court, choice of law – was much more restricted in the case of criminal justice. Instrumentality in resort to the criminal courts is certainly present, but differentiation between modes of trial allowed judges autonomy of action in relation to parties in conflict, and this makes trial something other than or more than a phase in an out-of-court conflict.

It is certainly true that in the fifteenth century evidence of malicious (mis)use of criminal justice is not hard to find, as the following examples show, culled from Ferrara, Bologna, Pisa, Florence and Sicily. They involve, variously, the use of 'official' justice to take private revenge, to inflict pain on an enemy, or to pursue family conflicts. In 1404 the lord of Ferrara was petitioned by a man afraid of being unduly imprisoned by the Podestà for homicide on the basis of 'evil' and 'untrue' information supplied 'out of vendetta'.¹⁶ During an exchange of cross-border violence in the 1490s – a wounding, followed by a killing – Modenese officials banished thirteen Bolognesi and prosecuted a further forty-four, giving rise to the impression that this was done not 'out of zeal for justice, but only to accomplish some tacit vendetta'.¹⁷ A peasant of the Lucchesia in 1400 informed the Podestà that a man called Menico had wounded his brother, and he laid this information, it later transpired, so that Menico would be tortured; he even added, in order to increase Menico's punishment, that he thought his brother was dead.¹⁸ At Cascina in 1407, the local official was tried for fraudulently denouncing a crime, an 'untrue denunciation, which he totally fabricated, having made no investigation of the truth, but acting only out of malice', and instigated by a Pisan citizen.¹⁹ In Bologna, we find a woman charged with killing her husband (who, as was later proved in court, in fact died of natural causes) as part of a battle with her in-laws for custody of her children; and girls 'abducted' in disputes within families regarding their marriage.²⁰ In Florence, as soon as the new magistracy on sodomy started

¹⁵ Wickham, *Legge, pratiche e conflitti*, p. 39; M. Della Misericordia, 'Giudicare con il consenso: giustizia vescovile, pratiche sociali e potere politico nella diocesi di Como nel tardo medioevo', *Archivio storico ticinese*, 38 (2001).

¹⁶ ASMo, Archivio segreto estense, Leggi e decreti, B III, fol. 130.

¹⁷ ASBo, Bologna, Lettere del comune, reg. 5, fol. 100v (23 March 1493).

¹⁸ ASLu, Podestà di Lucca, 5111, fol. 40.

¹⁹ ASPi, Comune, Podesteria di Cascina, fol. 17v.

²⁰ Dean, 'Domestic violence', p. 537; Dean, 'Fathers and daughters: marriage laws and disputes in Bologna and Italy, 1200–1500', in *Marriage in Italy, 1300–1650*, ed. T. Dean and K. J. P. Lowe (Cambridge, 1998).

work, it had to deal with malicious and slanderous denunciations, and with political use of proceedings against friends or enemies of the Medici.²¹ The earliest evidence of the criminal trial of magic in Sicily relates to a strategic accusation in a property dispute.²² Even women could, it seems, seek revenge through false accusation.²³ So, instrumental use of criminal justice is not hard to find; but these cases do represent only a tiny proportion of the total number of cases coming before the courts. Are we to assume that they are typical or untypical? Should we give more value to these attempts to exploit the judicial apparatus, or to the fact of their discovery by judges and rulers?

On the other hand, it is not the case that in the fourteenth and fifteenth centuries the differences between inquisition and accusation were slight or negligible. In law and doctrine at least, inquisition was more flexible than accusation. This is shown in three key aspects of trial procedure: proof, choice of witnesses, and the relation between judge-initiated trial and a victim's subsequent accusation. Accusations had to be proved in full; failure to prove one element meant that the whole accusation failed.²⁴ In inquisition, the judge could punish that part of the indictment that was proved. In accusations the witnesses were nominated by the accuser; in inquisitions the judge selected the witnesses himself, from those he believed most likely to know and tell the truth.²⁵ As Vallerani acknowledges, 'the real innovation, in contrast to accusation, is the selection of apparently neutral witnesses, not nominated by the parties'.²⁶ That 'apparently' would seem to suggest that Vallerani views even witnesses and their statements as part of conflicts conducted outside the court-room. However, practice after the middle of the fourteenth century moved away from reliance on witness testimony. In thirteenth-century inquisitions, the judge started by summoning and hearing witnesses from the locality of the crime, to confirm the reality of the crime and the name of the suspect. This phase of trial was later dispensed with, and judges accredited official denunciations without examination of witnesses. Only if the defendant denied the charge were local witnesses summoned and questioned.

²¹ Rocke, *Forbidden Friendships*, pp. 55–6.

²² F. Migliorino, 'Un "consilium" di Guglielmo Perno per un processo di magia in Sicilia', *Quaderni catanesi di studi classici e medievali*, 2 (1980).

²³ C. Lansing, 'Concubines, lovers, prostitutes: infamy and female identity in medieval Bologna', in *Beyond Florence: The Contours of Medieval and Early Modern Italy*, ed. P. Findlen, M. M. Fontaine and D. J. Osheim (Stanford, Ca., 2003), p. 90.

²⁴ *Consilia questiones et tractatus Bartoli cum additionibus novis* (Venice, 1495), *consilium* 117.

²⁵ *Statuti di Bologna dell'anno 1288*, p. 178; *Capitula, statuta et ordinamenta [civitatis Ast]* (1534), fol. 23v.

²⁶ Vallerani, *La giustizia pubblica medievale*, p. 45.

The relation between the right of a judge to inquire into a crime and the right of an accuser – once the inquisition was underway – to bring an accusation for the same crime also underwent significant change. This is partly visible in the contrast, a shift in emphasis, between two celebrated treatises on crime, one from the late thirteenth century (by Gandino), and one from the mid-fifteenth (by Gambiglioni). For Gandino, an inquisition should cease if an accuser subsequently submitted an accusation;²⁷ whereas for Gambiglioni, trial by inquisition was to give way to an accusation only if the accuser was also the victim of the crime.²⁸ Even in Gandino's day, this opinion had its proponents: the Bolognese statutes of 1288 declare that an inquisition will cease in the face of a later accusation only if the accuser is the victim or the victim's heir. More importantly, the statutes go on to say that, in any case, the Podestà may proceed on the basis of the proofs available in either the accusation or the inquisition, and if the accused is acquitted on the charge in the accusation, the Podestà can still convict on the basis of the proofs discovered in the inquisition.²⁹ Accusatorial trials were seen in some sense as not full trials, as unable to discover the truth, and as unable to deliver convictions. The reasons for this were plainly stated in various statutes, most plainly in those of Perugia: late accusations are fraudulently brought, they say, and name witnesses who know nothing of the crime, in order to halt an inquisition trial and to obtain an acquittal.³⁰ Other statutes too were concerned about the possibilities of negligence on the part of the accuser, collusion between the parties, or coercion by the powerful of their weaker accusers.³¹ Such statutes allowed the Podestà to resume an inquisition if an accusation failed owing to lack of proof or collusion between the parties.³² Already by the middle of the fourteenth century it seems a fairly common rule that an inquisition is not to be suspended or halted by a subsequent accusation,³³ and in the middle of the fifteenth Florence even ordered that those acquitted in a trial by accusation

²⁷ H. U. Kantorowicz, *Albertus Gandinus und das Strafrecht der Scholastik* (2 vols., Berlin, 1907–26), vol. 2, p. 44.

²⁸ G. Zordan, *Il diritto e la procedura criminale nel Tractatus de maleficiis di Angelo Gambiglioni* (Padua, 1976), pp. 86–7.

²⁹ *Statuti di Bologna dell'anno 1288*, ed. G. Fasoli and P. Sella (Vatican, 1937), p. 178.

³⁰ *Statuti di Perugia dell'anno MCCCXLII*, ed. D. Degli Azzi (2 vols., Rome, 1913–16), p. 21.

³¹ *Statuta floride et alme civitatis Cesene* (Brescia, 1473), clauses 2 and 12; *Statuta lucensis civitatis* (Lucca, 1490), iv, 1 and 26; *Capitula regni Siciliae* (Naples, 1551), p. 51 (1316?); *Statuto di Forlì dell'anno MCCCCLIX*, ed. E. Rinaldi (Rome, 1913), pp. 271–2.

³² *Lo statuto comunale di Fabriano* (1415), ed. G. Avarucci and U. Paoli (Fabriano, 1999), p. 124.

³³ *Statuto di Arezzo* (1327), ed. G. Marri Camerani (Florence, 1946), p. 201; *Statuta patavina* (Venice, 1528), fol. 100v (1329); *Antiqua ducum Mediolani decreta* (Milan, 1644), pp. 4–5 (1351). And see *Statuti di Belluno del 1392*, ed. E. Bacchetti (Rome, 2002), p. 280.

must be retried by inquisition.³⁴ Statutes thus allowed judges to switch between different methods of prosecution, or ordered them to proceed in both methods at the same time. It has to be acknowledged that statements from lawyers and lawmakers do not tell us about actual practice, but they do reveal an evolution in attitudes.

It is important to bear these perspectives in mind when examining indictments in detail, for they rarely refer to any wider conflict as context for the individual act of violence. Though there was clearly some room for instrumentality in criminal justice, there was also restriction of room for choice, manoeuvre and negotiation. Denunciation and *ex officio* prosecution introduced elements that were partly or wholly outside the scope of the parties' influence and control.

NARRATIVE OF THE TRIAL

Historians of crime tend not to focus on questions such as how cases came to court, or how the indictment was formed. Dinges has argued that this preliminary stage was the outcome of strategies and choices by the injured party.³⁵ Practice in Italy meant that the victim could bring an accusation (increasingly unlikely), could inform the local official responsible for denouncing crimes, or could broadcast his version of events in the hope that report (*fama*) would reach the ears of the judge in the city. Once the prosecution had begun, the defendant too had choices. He could choose not to respond to the summons, flee into another jurisdiction or wait to see what happened. Sometimes he might decide to appear in court only after an initial ban, having meanwhile negotiated peace with the injured party and prepared a plea in defence. Alternatively, the defendant could respond to the summons, and either confess or deny the charge. He could conduct his own defence, or hire an attorney (*procurator*), who might then submit legal objections ('exceptions') to the indictment. The trial records contain examples of all these possibilities. Some of them are common and routine, but others are more rarely documented.

In the case of denunciations by officials, it has recently been argued that these were triggered when any or all of a group of thresholds of tolerance was passed.³⁶ The first threshold relates to the type of crime and concerns the dividing line between public order and private honour. The second

³⁴ Stern, *Criminal Law of Medieval and Renaissance Florence*, p. 23: I assume that by 'the state' Stern means 'the inquisition'.

³⁵ Dinges, 'Usi della giustizia come elemento di controllo sociale', pp. 296–8, 313–15.

³⁶ *Ibid.*, pp. 303–11.

threshold relates to the person of the denouncer: those who denounce are mostly men and settled in the locality, and their tolerance of deviance (it is suggested) varies according to social and economic tensions and transformations, or concerns for public security or morality. The third and last threshold relates to the person denounced, and it affects tolerance of marginal groups, such as foreigners, migrants and old women. A key test therefore lies in the proportion of public order/security and private honour cases. This relates also to ideas of how the criminal justice system evolved, as it is claimed that in the later Middle Ages public security eclipsed private honour as a rationale for trials.³⁷

A first point: the process by which cases came to court was not mechanical, but involved decisions taken by a network (victim, notary, local official, informants), and therefore also the relations between them and the offender. Occasionally the veil is lifted on this process. A woman who wanted to bring an accusation of rape before the Podestà of Lucca was forced to undergo a verbal examination by the local notary before he would pen the requisite document.³⁸ Then there are numerous examples of the punishment of local officials for failing to denounce crimes.³⁹ And there are inquisitions that were initiated not on the unanimous report of many, trustworthy people, as the formula put it, but on the malevolent insinuation of just one person.

Once the case was opened, there is still much that is kept from us in the trial record. Torture is rarely recorded at the moment of its application. We hear of it only later, when the defendant, or others on his behalf, tries to raise objections to the legitimacy of the proceedings: a Sicilian, unable to withstand the pain, confesses to killing a citizen of Palermo, but the 'victim', the Palermo authorities attest, is alive and well in that city; in Bologna a pregnant teenager untruthfully confesses, out of fear of torture, to poisoning her husband.⁴⁰ That thieves were tortured was almost proverbial – 'tortured like a thief', we hear of one malefactor⁴¹ – but is rarely mentioned.⁴² So we cannot rely on the silence of the trial record as an indication that torture was rarely used (on this, see below, p. 107).

³⁷ G. Ruggiero, *The Boundaries of Eros: Sex Crime and Sexuality in Renaissance Venice* (New York and Oxford, 1985), pp. 9, 17–19.

³⁸ ASLu, Podestà di Lucca, 5190, fols 118–v, 121–32.

³⁹ H. Manikowska, "‘Accorr'uomo’: il popolo nell'amministrazione della giustizia a Firenze durante il xiv secolo", *Ricerche storiche*, 18 (1988), pp. 533, 540; ASBo, Curia del Podestà, busta 173, reg. 5, fols. 65, 77; reg. 9, fol. 70; etc.

⁴⁰ *Acta curie felicitis urbis Panormi*, vol. 1, *Registri di lettere gabelle e petizioni 1274–1321*, ed. F. Pollaci Nuccio and D. Gnozzo (Palermo, 1982), p. 72; ASBo, Comune, Governo, 306, fol. 231 (1455).

⁴¹ *Cronache senesi* ed. A. Lisini and F. Iacometti, *Rerum italicarum scriptores*, 2nd series, vol. 15, pt 6 (Bologna, 1931–), p. 598.

⁴² Dean, *Crime in Medieval Europe*, pp. 15–16.

Strategies in the court-room could vary from place to place. In some cities, the use of attorneys (*procuratores*) to present the defence case was more common than in others. In Bologna, well supplied with trained lawyers, it was more frequent than in Lucca, where defendants tended to defend themselves. In Milan too it is said that defendants seldom used procurators.⁴³ We should not, however, assume that defendants in Milan or Lucca lacked knowledge of the law. In Lucca, for example, husbands charged with wife-battering cited the statutes, chapter and verse, in order to annul the prosecution (below, pp. 175–6). In Bologna, however, lawyers were likely to enter longer lists of objections to indictments. They would start with a formulaic statement denying that the indictment had been drawn up properly, in accordance with the statutes, before fielding one or more of a fairly fixed number of arguments: there was no incriminating evidence (*indicia*); the defendant's confession was extracted under torture improperly administered; the crime was not one that the judge could try by inquisition; the alleged crime fell outside the prescribed time; the witnesses were ineligible to give evidence because they were 'base' or infamous people or enemies of the defendant.⁴⁴ These arguments all concerned the procedures of the judicial investigation. Other arguments presented, against the *fama* that incriminated the suspect, an alternative *fama* that besmirched and disparaged the victim. A key example of this strategy – which was one more of attack than of defence – was the claim in rape or adultery cases that the victim was a prostitute, and that sex with her could therefore not be punished. A good instance of this occurred in Bologna in 1394.⁴⁵ The indictment against two men, one from Parma, the other a smith, read that they had gone at night to a house in the city, where one of them had 'adulterated' and 'carnally known' the householder's wife, Bella, while the other assisted him. One of the defendants came to court and alleged that Bella had been a prostitute for over a year, and that there was public knowledge (*publica vox*) of this in the neighbourhood. His five witnesses supported his claim, providing hearsay that such-and-such a man had had sex with her, and that she was in the habit of going to a spinning-shed at night and 'letting herself be known' by several men. In this case, the outcome of the trial is not recorded, but this type of defence was not always successful, as similar cases in the following years showed.⁴⁶ In this strategy, men sought

⁴³ Verga, 'Le sentenze criminali dei Podestà milanesi', p. 110.

⁴⁴ Some examples: ASBo, Curia del Podestà, Inquisitiones, busta 194, reg. 1, fol. 46; busta 261, reg. 6, fols. 57–60; busta 263, reg. 2, fols. 37–v; busta 266, reg. 2, fol. 30; busta 267, reg. 3, fol. 165; busta 333, reg. 2, fols. 3v–5v.

⁴⁵ Ibid., busta 267, reg. 1, fols. 34–38v, 164–166v. See also Kantorowicz, *Albertus Gandinus*, p. 360.

⁴⁶ ASBo, Curia del Podestà, Inquisitiones, busta 269, reg. 1, fols. 78, 93–8; busta 274, reg. 2, fols. 67–70v; busta 285, reg. 2, fols. 74–81.

to exploit, and women to evade, the law's clear distinction between decent women and prostitutes, which failed to match social reality.⁴⁷

Other defence arguments focused on the issue of criminal responsibility: there should be no penalty for the crime because it was an accident, or because the defendant was a child or insane.⁴⁸ Accidents, such as ox-carts killing children in the road, could be investigated quite carefully. One cart-driver was acquitted in 1413: no negligence could be ascribed to him, the judge found, as he shouted out and tried to save the three-year-old child whose chest was crushed by the cart-wheel. In a similar case three years later, in which the cart ran over the head of a two-year-old, the cart-driver was convicted because he failed to pay due attention.⁴⁹ Accidents also occurred with knives worn at the side of the body. These could cause accidental injury in boys' play-fights if they lacked scabbards.⁵⁰ Boys often inflicted injuries when throwing stones: when this was done in play, it was likely not to be denounced, or could be easily pacified;⁵¹ when it was done in earnest, it received easy acquittal or reduction of penalty.⁵² Insanity, when supported by sufficient testimony, always produced an acquittal. A Lucchese citizen, charged with wounding a woman with a stone, was proved to suffer from epilepsy, and to be persecuted by boys in the street, who pushed and provoked him, made fun of him and treated him like an animal; when he 'in fury' struck back at them, he did not know what he was doing.⁵³ Domenico da Udine tore up a picture of the Virgin Mary and threw the pieces on the fire: he was said to have been insane for two years – he would stay in bed for days without eating, and then get up and go to his garden and eat leaves (without bread, too), 'like a wild animal'.⁵⁴

The progress of a trial thus involved a complex group of individual choices and legal arguments. Though local officials were duty bound to denounce crimes, they clearly acted selectively at times. Repute could be misreported to the judge. There was a wide range of legal objections available that could exculpate a defendant.

Some of these complexities can be seen in a case from 1473. Francesco, the son of a blacksmith at Castel San Pietro (near Bologna), was prosecuted

⁴⁷ Lansing, 'Concubines, lovers, prostitutes', esp. p. 89.

⁴⁸ For some cases in fourteenth-century Venice, see G. Ruggiero, 'Excusable murder: insanity and reason in early Renaissance Venice', *Journal of Social History*, 16 (1982–3). In general, A. Pertile, *Storia del diritto italiano* (6 vols., Turin, 1896–1903), vol. 5, pp. 68, 135–44.

⁴⁹ ASBo, Curia del Podestà, Inquisitiones, busta 301, reg. 1, fols. 69–72; busta 305, reg. 2, fols. 90–3.

⁵⁰ Ibid., busta 238, reg. 7, fol. 107; and see above.

⁵¹ ASLu, Podestà di Lucca, 5386, fol. 77; 5268, fol. 68. ⁵² Ibid., 5190, fols. 145, 149.

⁵³ Ibid., 4826, fols 48–v; 4828, fols. 18–19 (1352).

⁵⁴ ASBo, Curia del Podestà, Inquisitiones, busta 340, reg. 4, fols. 165–6 (1436).

by inquisition for intentional homicide, having beaten his pregnant wife, Jacoba, causing both a miscarriage and her death.⁵⁵ He appeared in person to deny the charge and nominated witnesses to prove the following points: that he had loved Jacoba and had treated her well; that she was a sickly person and had died of a fever; and that those who informed the judge, especially two men, Gaspare and Tommaso, were paupers and Francesco's enemies. These witnesses, as well as the original informers, were then examined. The depositions of Gaspare and Tommaso take us deeper into the processes by which *fama* was constructed and reported. Gaspare and Tommaso said that they had heard from women of the town – women who prepared Jacoba's body for burial, women at the funeral – that Jacoba had miscarried and had died from beatings. Another witness, a woman, supports this: her sister, washing clothes in the canal, heard one of Francesco's kinswomen say to his step-mother, 'I hear that our Jacoba died from beatings her husband gave her'; 'Keep quiet', came the reply. Rumours were thus circulating in the neighbourhood – and based on what must have seemed trustworthy sources – that a murder had taken place. And what was the source of these rumours? Jacoba's mother, everyone agreed. Unwilling or unable to bring an accusation or to prompt an official denunciation, the dead woman's mother spread talk naming Francesco as Jacoba's killer. Was she relying on *fama* to do the work of informing the judge? Unfortunately for her, this information was passed to the judge by men who could be impugned as unreliable, showing how official justice could be shaped by local enmities. This gave the husband the opportunity to present a credible defence, based on a narrative of domestic harmony and personal hatreds.

Each trial thus involves decisions by a wider group of actors than just the offended party. Informants, judges, witnesses all played their part. And the relation between each actor and the negotiation or repression of an offence could vary.

NARRATIVE IN THE TRIAL

Arlette Farge has observed that the judicial archive miniaturises the historical object, it offers 'un monde morcelé', a profusion of imperfect, incomplete individual narratives. We have fragments of people's lives within documentation that is itself fragmentary: we often do not know the outcome

⁵⁵ Ibid., busta 374, fols. 108–12, 142v–52v (1473). For the reverse situation, of the wife, charged with killing her husband, who produces witnesses to prove that she loved him and that he died of fever, see my 'Domestic violence', pp. 536–9.

of court cases; prosecutions peter out, and fail to conclude. What for example do we do with the following fragments, all taken from the Bolognese criminal court records of the late fourteenth and fifteenth centuries? We might start with some very simple and 'ordinary' cases, three prosecutions all begun on the same day in January 1455:

1. Maestro Ugolino, from Piedmont but living in Bologna, knowingly wounded with a stick Bartolomeo from Istria, on the arm, with bloodshed, in the street.
2. Jacobo di Battista, from Bologna, knowingly played with some false dice, winning the sum of 25 *bolognini* from another man, in the Peacock tavern, the previous December.
3. Veronica, the wife of a foreign inhabitant in the city, knowingly stole a sheet worth 20 *bolognini* from the house of a female member of the Lambertini family.⁵⁶

The striking features of these pieces of narrative are simplicity and precision (location, sums of money); the use of active verbs clearly denoting criminal behaviour; the stress on consciousness of the crime; and the recording of consequences (bloodshed, financial loss). Clarity of action, intention and consequence were all required to make a crime of an action. In this sense, the process made the crime.⁵⁷ These features are likewise present in more exceptional cases, drawn from a broader period:

4. Antonia was staying in the house of Antonio as his housekeeper. Her niece, Apollonia, was also staying there. Antonia said to the girl, 'You've to go to your sister's wedding, and you haven't got any clothes. Go and take some money of Antonio's to buy yourself some things.' So Apollonia went into Antonio's bed-chamber, opened a chest, and took 5 *lire*, which she gave to Antonia, who bought her some clothes.⁵⁸
5. Federico from Germany, a vagabond, sold to a foreigner some cards with painted drawings of images of the saints, and received in payment some counterfeit Bolognese coins, which he then knowingly spent in Bologna, buying food that he needed, thus defrauding and deceiving the people of the city.⁵⁹
6. A pair of vagabonds, Niccolò and Maria, were travelling in the guise of hermits, begging bread. They found a young boy, aged under two years, in the street outside his father's house in Modena. They abducted the

⁵⁶ ASBo, Curia del Podestà, Inquisitiones, busta 360, reg. 1, fols. 47–9.

⁵⁷ Cf. J. Arnold, *Inquisition and Power: Catharism and the Confessing Subject in Medieval Languedoc* (Philadelphia, 2001), p. 165.

⁵⁸ ASBo, Curia del Podestà, Inquisitiones, busta 298, reg. 4, fol. 30 (1412).

⁵⁹ Ibid., busta 267, reg. 3, fol. 108 (1395).

boy, changed his name to Giovanni, and took him begging with them, to many and various places and cities. Having kept him for fourteen months, they came to Bologna, where his father sought to recover the child through the law-court, but they swore in their defence that Giovanni had been born in Forlì and was theirs.⁶⁰

7. A man tried to persuade his married lover to poison her husband: he gave her some arsenic and said 'I want you to come with me and to leave Mignano [the husband], because I have 25 *lire* in cash, and I hope to have another 25 tomorrow. I shall make sure that you're well kept, and I shall never leave you. Give Mignano this poison.' But she didn't: instead she informed on her lover.⁶¹
8. Catelina from Imola had been living with a mercenary soldier, Niccolò, for some days as his mistress. She then left him, saying that she no longer wished to live with him, but wanted to go to the house of a friend living next to the Franciscan church and to stay there as a 'good woman'. But Niccolò pursued her across the piazza and through the city, repeatedly asking and pestering her to return home. She steadfastly refused. Eventually, he seized her and tried to take her home by force. He managed to drag her some of the way, but her shouts attracted the intervention of some bystanders, who released her.⁶²

It would be possible to put these fragments into the larger narrative of the evolution of the trial system, away from protecting private honour, towards securing public interests. Some of these little histories are concerned with public safety and security (the coinage, the streets), while vagabonds, servants and soldiers were transient, unsettled elements in the population, all arousing different kinds of anxiety about their stereotypical behaviour – the cheating beggar, the thieving servant, the riotous soldier.

Given that this is not a representative sample, however, it would be rash to draw many conclusions about trends across the judicial system. A different approach is needed, namely a focus on the narrative construction within the indictment. With such material, we must avoid the naïve assumption that it reflects accurately what really happened. We do not know how these indictment stories were written: who wrote them, or with what sources of knowledge. We might presume that the victim's complaint would play a large part, filtered through layers of official and legal expertise and expectation; but where the victim was not present, it is more difficult to guess where the information has come from. Silvana Seidel Menchi has

⁶⁰ Ibid., busta 264, reg. 1, fol. 32 (1393).

⁶¹ Ibid., busta 173, reg. 5, fol. 31 (1352).

⁶² Ibid., busta 173, reg. 5, fol. 82 (1352).

said that historians fall into two groups: those who are more confident that judicial documents are credible channels, transmitting the reality of an event; and those who are more guarded and restrictive, seeing prosecutions as themselves strategic, and any statement in court as constructed according to rules of legal rhetoric.⁶³ Mario Sbriccoli too has taught us to be aware of the legal dimension of judicial documents, and to be aware that the legal dimension consists not just of norms and procedures, but also of a discourse.⁶⁴

When we look at these indictments, what strikes us is how often they are narratives structured around moments of temptation and choice: the housekeeper who needs money for her niece's wedding dress; the vagabond who needs to buy food but has only counterfeit coins; the woman who is offered a way out of marriage; the man who chases after his former lover. In most cases, the indictment creates for the accused a narrative in which they make the wrong choice: the housekeeper steals, the vagabond spends the coins, the beggars abduct the boy, and the soldier drags the woman home. Moreover, in some cases, the accused is presented as not simply making a bad choice, but actively opposing a good outcome: contesting paternity of the child, obstructing a former mistress from pursuing her virtuous intentions. The indictment is thus clearly crafted to present the court with an open-and-shut case. Ambiguity is avoided; complexity is simplified. Indictments, it might be argued, have much to do with story-telling. Natalie Zemon Davis has made a similar point regarding other types of judicial document: petitions for pardon ('fiction in the archives', she calls them) and depositions (the story-tellers of Montaillou, she says, had formulas for narrating their personal histories).⁶⁵ We know that already in the thirteenth century there were formularies setting out how local officials should denounce crimes; and not just for common crime, but even for rarer cases such as attempted gang-rape and abduction of girls for sexual purposes.⁶⁶ As Gravidal has suggested, court records were 'a kind of specialised literary genre, with strict and well-defined generic conventions'.⁶⁷

⁶³ S. Seidel Menchi, 'I processi matrimoniali come fonte storica', in *Coniugi nemici: La separazione in Italia dal XII al XVIII secolo*, ed. S. Seidel Menchi and D. Quagliani (Bologna, 2000), pp. 59–68.

⁶⁴ M. Sbriccoli, 'Giustizia negoziata, giustizia egemonica'.

⁶⁵ N. Z. Davis, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France* (Cambridge, 1988); Davis, 'Les conteurs de Montaillou', *Annales ESC*, 34 (1979).

⁶⁶ G. Rossi, "'Processus de causis civilibus et criminalibus': formulario bolognese del secolo XIII', *Studi urbinati: scienze giuridiche ed economiche*, 31 (1962–3), pp. 114–22.

⁶⁷ K. Gravidal, *Ravishing Maidens: Writing Rape in Medieval French Literature and Law* (Philadelphia, 1991), p. 131. And see Wickham, *Legge, pratiche e conflitti*, p. 41.

The way that indictments shape events is shown in a further case from Bologna in 1450.⁶⁸ The denunciation comes from the village of San Venanzio and relates that one Giacomo had a brawl there with Piazatino as they played dice together: 'in which brawl, the said Giacomo with a bread-knife that he had at his side struck and wounded the said Piazatino one blow and wound in the body . . . with the greatest shedding of blood, from which blow Piazatino died'. In response to this prosecution, Giacomo petitioned the papal legate in Bologna, asserting that the local official had narrated the event inaccurately, out of either error or ignorance. Giacomo's version states that he is under fourteen years of age, and was guarding some grazing animals, along with other boys. They were playing a non-prohibited game, and he and Piazatino grappled with each other, 'as is usual in this game'. Then accidentally, in play ('casualiter more ludi'), Giacomo fell down and Piazatino landed on top of him and was wounded by the unsheathed knife he had at his side. And because the wound was not promptly treated – they were in the fields – Piazatino quickly died. Giacomo thus appeals to three elements that would excuse him from criminal responsibility: his age; an accident during a lawful game; and the victim's lack of medical treatment. To this the defence witness added that, though Piazatino's parents complained loudly against this 'killer', Piazatino himself, before he died, said that Giacomo had acted without malice (*dolo*) or blame (*culpa*).⁶⁹ Whereas the indictment accumulates sanctionable actions (dice-playing, brawling, wounding, bloodshed), establishes an unequivocal causal relation (he died from the wound), and implies intention through the use of active verbs of violence, the petition minimises the illegalities, diffuses the cause (part accident, part lack of treatment), and denies any intention (even the victim is posthumously recruited to this version).

Some of the above cases are, of course, unrepresentative in type – though not in narrative modes – of the ordinary caseload of most Italian medieval courts. Indictments fall mostly into one of four categories: those unmarked by any imputing of motive or deploring of values transgressed, and those marked by concerns about either religion, public security or private honour. The vast majority of indictments, being cases of assault or affray, simply ascribe the injury to the defendant, specifying the place and time of day, the weapon used and the nature of the wound inflicted. Serious cases of homicide (poisoning, assassination) and of sex crime (rape, incest, sodomy,

⁶⁸ ASBo, Curia del Podestà, Inquisitiones, busta 355, reg. 2, fols. 126–9.

⁶⁹ Despite this, the judge condemned Giacomo, contumaciously, to a fine of 50 *lire* (*ibid.*, fol. 129v), but this was cancelled by the papal legate when 10 *lire* was paid, on Giacomo's behalf, to the building fund for his new palace (fol. 167v) – a common procedure.

abduction) typically refer to the temptations of the devil and the actor's choice of evil over good ('inspired by a diabolical spirit, not having God before his eyes but rather the enemy of humankind').⁷⁰ Cases of adultery and insult insist on the damage done to the victim's honour and reputation ('to his great shame and dishonour' etc.). Arguments from public security were applied to a broader range of cases. Counterfeiting defrauded the public, as we have seen. The activities of a prostitute could be deemed a public danger (see below, p. 153). Blasphemy and sodomy imperilled civic welfare because they invited divine retribution (p. 119). Clandestine marriage could be declared 'against good mores', while fixing images of genitalia outside a house-door at night was 'against all civility'.⁷¹ Indictments thus impose narratives on defendants at various levels: motivation, intention, the relation between action and outcome, and the effect in violating public values. The resources and tactics that suspects could use to challenge this 'web of power and language' will be further discussed below (pp. 187–9).⁷²

TRIALS IN FOUR CITIES

To investigate further the issue of continuities and changes in criminal justice, and the balances between formal and informal resolution and between public security and private honour, I have taken samples from four judicial archives. The purpose here is to sketch out some of the varieties of criminal justice, not to provide a total history of justice in these chosen cities. Consequently, I have paid attention to the following features of trial records: the balance of accusations and inquisitions; the range of crimes prosecuted, and the status of the defendant; the course of the trial, especially early termination; and outcomes, notably the range and type of punishments. The selection of cities calls for some words of justification, as I have here avoided both Florence and Venice, choosing instead material from Bologna, Lucca, Mantua and Savona. The archives in Bologna and Lucca have two of the most consistent and continuous collections of criminal trial records for the Italian Middle Ages. Omitting them from any study would be difficult. It must be acknowledged, however, that other possibilities might have been Florence or Perugia. These latter cities, however, were politically rather similar to Bologna and Lucca in the period: surviving republics that

⁷⁰ See Cohn's comments on use of the formula 'spiritu diabolico': S. K. Cohn, *Women in the Streets: Essays on Sex and Power in Renaissance Italy* (Baltimore and London, 1996), p. 201.

⁷¹ ASBo, Curia del Podestà, Inquisitiones, busta 327, fol. 54v (1427); busta 373, fol. 207 (1473).

⁷² Arnold, *Inquisition and Power*, p. 166.

experienced periods of lordly or princely rule. In order to provide greater contrast, two other types of city were selected: Mantua, under the stable dynasty of the Gonzaga, is one of very few principalities to preserve judicial records, while Savona is a smaller city, coastal not inland, at times independent, at times a dependency of Milan or Genoa. In a chapter of this scale and size, it would be impossible to be exhaustive, while the advantages of my selection is that it draws attention away from the two Renaissance cities that have been most intensively studied, and towards more typical cities of the period, those of middling size. Savona's population of perhaps 14,000 before the Black Death, and of half that in the early fifteenth century, compares to Mantua's 20,000 before the plague and 27,000 by 1463. The population of Bologna has been reckoned at over 40,000 in the 1320s, falling to 32,000 by the 1370s and further in the rest of that century, but perhaps recovering in the course of the successive one, while Lucca counted 25,000 when it was a first-rank commercial and financial centre before the plague, falling to 10,000 in the early fifteenth century but, exceptionally for Tuscany, recovering during that century owing to its silk industry.⁷³

SAVONA 1355, 1455

Savona boasts the earliest complete judicial register to cover an entire year (1250).⁷⁴ But, as with most other Italian cities, its judicial archive thereafter is fragmentary. There survive two registers of sentences issued by the Podestà; one covers the years 1355–6, the other 1449–58. The structure of these registers is itself indicative of a certain kind of justice. They mix together four different types of wrong: criminal damage (*damnum datum*), such as damage to crops by oxen or removal of fruit; public order offences, such as carrying weapons or breaking the curfew; insult and minor physical injury, dealt with by accusation; and serious crime, dealt with by inquisition. The presence of field damage in an urban judicial register is a sign of the small size of the city and the undifferentiated nature of its judiciary: larger cities had separate judges for such matters. Public order offences – the summary imposition of fines by the urban police for carrying prohibited weapons and going abroad at night without a torch – were also recorded separately in larger cities.

From these two registers, I have taken the cases relative to two years separated by a century: 1355 and 1455. The year 1355 represented a brief

⁷³ M. Ginatempo and L. Sandri, *L'Italia delle città. Il popolamento urbano tra Medioevo e Rinascimento (secoli XIII–XVI)* (Florence, 1990), pp. 70–2, 75, 85, 106, 109, 112.

⁷⁴ I. Scovazzi and F. Noberasco, *Storia di Savona* (3 vols., Savona, 1926–8), vol. 3, pp. 228–56.

moment of peace in a period marked by uprisings and warfare, in which Savona's room for manoeuvre was constrained by its dependent relation on its close and powerful neighbour, Genoa. Savona had experienced a popular rising in 1345, and then in 1354 followed Genoa in surrendering to the Visconti of Milan. But in doing so it negotiated its own terms with the Visconti, ones that strengthened its own political position and weakened Genoa's control of its trade. From the Visconti lordship, Savona gained internal peace and a commercial revival. Two years later, however, Genoa rebelled against the Visconti, and prepared a military operation against Savona.⁷⁵ The same general features were present in Savonese history in the mid-1450s: unpopular Genoese rule, and outside intervention. Although in general the fifteenth century was a favourable period for the city, being called an economic 'golden age', the 1440s had been bleak: Savona's rebellion against Genoa was brutally suppressed, there was constant small-scale warfare in the region, and trade declined. In the 1450s Milanese interest in Liguria was matched by that of the kings of France and Naples, and in 1455 Savona was occupied by a Neapolitan fleet and army, before the duke of Milan concluded a truce (in July).⁷⁶

What dominate the register numerically in 1355 are the prosecutions for insult and minor injury: over fifty cases of insult, nearly forty of minor assault, and nearly twenty of brawling.⁷⁷ The insults combine stereotypical elements – the lexicon of bestiality and whoredom, of lies, threats and curses – with more unusual forms that were perhaps local or regional (see below, pp. 113–19). The assaults were mainly bloodless: seizing a man's hood, kicking a servant, pulling a man by the hair and punching him in the face, and so on. If blood was shed, it was in droplets: by scratches to the throat, for example. Accusation also accounted for a range of other offences that might be thought to have more serious implications for public order: gambling, blasphemy and rape.⁷⁸ Accusation remained the mode of prosecution for these offences for one of two reasons: either because, as in the case of gambling and blasphemy, they were crimes in which the accuser took a share of the eventual fine, or because, as in the case of rape, the principle still held that only the injured party could initiate proceedings. In fact, the proprietorial attitude to rape is underlined, because the only cases

⁷⁵ *Ibid.*, vol. 2, pp. 105–115; vol. 3, pp. 165–9. ⁷⁶ *Ibid.*, vol. 2, pp. 256–71; vol. 3, pp. 171–9.

⁷⁷ Archivio di Stato, Savona, Serie Ia, Comune di Savona, 1173, 'Liber parlamenti et condemnationum . . . domini Johanoli de Vicecomitibus . . . potestatis . . . civitatis Saone'. For the insults, see below, pp. 113–15. For assaults and brawls: fols. 2v, 4, 4v, 5, 6, 7v, 8, 8v, 9, 10, 11, 11v, 15v, 16v, 17, 17v, 18, 18v, 21v, 23, 23v, 28v, 29, 29v, 30, 30v, 31v, 32v, 31 (bis), 31v (bis), 32 (bis), 32v (bis), 33v (bis), 35, 37, 37v, 39, 39v, 40v, 43, 45, 47v–8.

⁷⁸ *Ibid.*, fols. 3v, 4, 31, 33v, 42v, 46, 47v–8.

relate to the rape of slaves, in which it was the owner's property rights that were violated. Inquisition was thus confined to a small range of offences: homicide; assaults involving injuries with prohibited weapons, especially swords; all brawls (*rixae*); certain forms of aggressive behaviour; defamation of public officials; and some sex crimes (adultery, sodomy). The judge thus used his powers to proceed *ex officio* in cases with a clear public-order profile: major or mortal bloodshed; public disorder; behaviour likely to lead to bloodshed; and actions that undermined the probity of officialdom or the sanctity of marriage and procreative sex.

The penalties imposed reflect this broadly accusatorial culture. Whether the case was brought by accusation or inquisition, the dominant form of penalty was the money-fine. For insult it was often 10 or 20 or 30 *soldi*; for assault, anything from 1 to 25 *lire*, depending on gravity; likewise for brawling; for gambling 10 *soldi*. Corporal and capital punishments were rare. Two brothers who attacked two other men with swords, killing one of them, were sentenced contumaciously to decapitation.⁷⁹ The only capital punishment actually inflicted in this year was for sodomy: a man from Messina tried to rape a fellow-guest at his hostel in Savona.⁸⁰

The picture a hundred years later in Savona is unchanged: the same mixture of criminal damage, insult, minor assault and occasional inquisitions.⁸¹ In a register in which cases of field damage predominate (over ninety cases), there are some thirty accusations for insult, and thirteen for minor assault.⁸² Both the insults and the assaults are predictable: 'You only want to pay me with words and lies', 'You're lying in your throat because you're a thief and a killer [*manegoldo*], and stole 600 *lire*', 'You're an animal'; punches to the face, blows with a knife-handle or with a knife on the shoulders. Accusation is also used for aggressive or threatening behaviour and for blasphemy, and even for robbery.⁸³ Inquisition, as before, is used sparingly, for homicide, or for assaults involving bloodshed caused by weapons. A novelty is its use for some instances of theft.⁸⁴

Accordingly, penalties are again overwhelmingly pecuniary. A hired assassin was sentenced to a fine of 300 *lire*. When a shoemaker confessed to wounding one of his workers in the shoulder with a sword, the judge declared that as the wound was slight and inflicted 'not maliciously, but unpremeditatedly', and as the statutes allowed masters to discipline their servants, he would sentence him to a fine of under 4 *lire*.⁸⁵ No corporal or

⁷⁹ Ibid., fol. 32v. ⁸⁰ Ibid., fols. 26–v. ⁸¹ Ibid., 'Libro di processi penali'.

⁸² Insult: *ibid.*, fols. 216, 217v, 223v, 224, 224v, 225, 225v, 227v, 230v, 233v, 237v, 238v, 239, 241v, 242, 242v, 243v, 244v, 245v. Assault: *ibid.*, fols. 223v, 225v, 231v, 232, 236, 236v, 240, 242, 244, 245, 246.

⁸³ Blasphemy: fol. 219v; robbery: fol. 245v. ⁸⁴ Ibid., fols. 208, 208. ⁸⁵ Ibid., fol. 230.

capital punishment was inflicted in Savona in 1455, it seems. For such punishment, we have to go either back in time to the death penalty imposed on a thief from Chiavari in 1454,⁸⁶ or forward to the corporal punishment of a sodomite in 1457.⁸⁷ Even here, the statutory penalties were moderated: the thief was decapitated rather than hanged, by order of the governor; and the sodomite was whipped and had an ear amputated, having obtained a concession (*gratia*) from the Captain.

This resistance to the use of inquisition is confirmed by other judicial documents in the Savona archive: trial papers that include the arguments presented to the judge by defendants' attorneys. These include objections to holding a suspect in prison, objections to the possible use of torture, objection to the very use of inquisitorial procedure against citizens, and denial of the existence of incriminating evidence.⁸⁸ These papers confirm that, even in the later fifteenth century, theft in Savona was still dealt with by accusation.⁸⁹

Criminal justice in Savona was thus of a strongly negotiated kind. The initiative lay with the injured party. Capital punishment was reserved for incorrigible thieves and sodomites, outsiders of course. Everyone else was allowed to pay money-fines, often mitigated for pacification between the parties, and often not paid in full. This was in many ways a model of small-city justice in the later Middle Ages. Before the arrival of 'le temps des supplices', associated with early modern forms of rule, town governments used only two weapons in their 'arsenal of repression': fines and banishment.⁹⁰

BOLOGNA 1351, 1450

The contrast with Bologna is striking. The Bolognese criminal court was a much more inquisitorial operation. Accusations were rare: in the records for 1351, there were just four. In the city, one woman accused another woman of punching her in the face; and a smith accused a man of abducting his wife and of keeping her as his mistress (*amica*) 'for sexual purposes' ('pro libidinis causa').⁹¹ Two more accusations in the *contado* were trivial: one of a woman, for hitting a man on the nose with a scabbard when he made explicit sexual advances to her; the other for a theft of olives from

⁸⁶ Ibid., fols. 168v–169v. ⁸⁷ Ibid., fols. 274v–275.

⁸⁸ Atti maleficiorum, buste 44 and 45 (1476, 1480–3). ⁸⁹ Ibid., nos. 480.11.3, 481.4.10.

⁹⁰ R. Muchembled, *Le temps des supplices: de l'obéissance sous les rois absolus, XVe–XVIIIe siècle* (Paris, 1992).

⁹¹ ASBo, Comune, Curia del Podestà, Inquisitiones, busta 172, reg. 14, fols 14, 19.

trees.⁹² All the other criminal cases were initiated either by a denunciation by local officials or by the judge *ex officio*. As a result, the pattern of prosecution is very different: less insult, more theft and robbery; more crimes against the judicial apparatus (jail-breaking, resisting arrest, false testimony) and against the regime (conspiracy, political speech crimes). As a further consequence of the higher proportion of public-order offences, reference to capital punishment is more frequent.

In Bologna, the year 1351 was an important period of transition between different regimes. In 1350, the native regime led by the Pepoli family, having failed to defend the territory from military incursion, sold the city to the Visconti lords of Milan. Bologna then became a centre and base of Milanese expansion, but this was to bring only damage to the population, through the costs of war, the destruction of trade, the devastation of the countryside and the reduction in revenues.⁹³

In the criminal trials from that time, violence, in the form of assault, brawling and homicide, constitutes the largest category of prosecutions, as is to be expected. What is not so predictable is the clear division in the trial records between violence by citizens or long-term inhabitants of the city, and violence by soldiers or foreigners (see below, pp. 169–70). Punishment patterns also show strong differences from Savona. Physical punishment was both adjudged and inflicted more frequently. Details of penalty are not systematically or consistently recorded in the trial records, but often the notary notes that a suspect was ‘condemned’ (i.e. was present to hear the sentence) or ‘banned’ (as contumacious), adding in many cases the precise penalty due. Of these latter cases, over a hundred were monetary, and some twenty were corporal or capital. Other cases ended in the actual infliction of penalty: one woman was burned to death, one thief and an assailant were whipped, another thief lost a hand, three killers were beheaded, eleven thieves were hanged and one man had his tongue cut out for seditious talk during an army muster. Some of these executions are represented in the registers by little drawings of men hanging on the gallows.

The identity of those put to death is significant: two men – one from Florence, one from Bergamo – were beheaded for committing murder in politically sensitive, symbolic places, namely the lord’s palace and the main square;⁹⁴ a German soldier was executed for a deliberate murder in one of the main commercial spaces in the city (the *trivium porte Ravennate*).⁹⁵

⁹² Ibid., busta 172, reg. 14, fols 23, 33.

⁹³ L. Sighinolfi, *La signoria di Giovanni da Oleggio in Bologna (1355–1360)* (Bologna, 1905), pp. 8–9.

⁹⁴ ASBo, Comune, Curia del Podestà, Inquisitiones, busta 171, reg. 7, fol. 8; busta 172, reg. 8, fol. 33.

⁹⁵ Ibid., busta 172, reg. 2, fol. 16.

Another decapitation was carried out on a Milanese soldier for an attempted rape.⁹⁶ The hanged thieves also show a preponderance of foreigners over natives (by nine to two), and a clustering around sensitive types of crime. First, thieving in the milieu of Visconti soldiers: a soldier from Bergamo wrecked a citizen's house by taking away the door, the stairs, some beams and other timbers;⁹⁷ a Bohemian, probably a soldier's servant, stole clothing and house-linen;⁹⁸ and a man from Arras stole clothing from the house of a French soldier, and helmets and other armour from the house of an infantry captain.⁹⁹ Secondly, atrocities by female thieves: a woman from Verona sold her own child;¹⁰⁰ a Bolognese woman, having obtained charitable lodging in a house, then knifed the house-servant and looked for things to steal.¹⁰¹ And finally, criminality on the main square: a man from Nazzaro, near Piacenza, cut purses on the piazza and tricked a woman who was selling some second-hand clothes.¹⁰² The symbolic value of this pattern is evident: rulers needed to show that they could maintain order among their soldiery and could protect key public spaces; women who flagrantly transgressed ideals of good female conduct – maternity, dispensing charity – were punished as examples. Just as the soldiers and foreigners were prosecuted for the roughest violence, so too they received the roughest punishments.

This level of capital punishment may not be unrelated to the evident difficulties the Visconti regime was experiencing in winning a general consensus from the Bolognese citizenry. Forms of disaffection in this year alone were many. There was at least one conspiracy.¹⁰³ Contemptuous and 'scandalising' words were uttered at a muster of troops due to go on campaign against Imola.¹⁰⁴ Sixty men bribed officials for sick-passes to leave the army in Tuscany.¹⁰⁵ Words spoken in disrespect of the lord of the city, or to the detriment of exiles returning by his favour, were punished.¹⁰⁶ One man objected to an image of a lily (a Guelph symbol) being over-painted; another drew gallows on a tavern wall, depicting the Visconti emblem hanging from them.¹⁰⁷ In this context, the regime may have sought to demonstrate at least some vigour in its response to criminality, by hanging thieves.

Nearly a hundred years later, in 1450, the political context was changed, and the pattern of trials was again different. As a city in the papal state, attractive to Milanese expansion, but also with strong attachment to civic

⁹⁶ Ibid., busta 172, reg. 2, fol. 52. ⁹⁷ Ibid., busta 171, reg. 3, fol. 69.

⁹⁸ Ibid., busta 171, reg. 7, fols. 23–24v. ⁹⁹ Ibid., busta 172, reg. 6, fol. 17.

¹⁰⁰ Ibid., busta 171, reg. 2, fol. 60. ¹⁰¹ Ibid., busta 172, reg. 6, fols. 3–4.

¹⁰² Ibid., busta 171, reg. 9, fol. 5. ¹⁰³ Ibid., busta 172, reg. 7, fols 29, 39.

¹⁰⁴ Ibid., busta 172, reg. 2, fols 34, 38, 40. ¹⁰⁵ Ibid., busta 172, reg. 11, fol. 17.

¹⁰⁶ Ibid., busta 171, reg. 9, fol. 49; busta 172, reg. 2, fol. 24; reg. 9, fols. 18, 19.

¹⁰⁷ Ibid., busta 172, reg. 2, fols. 9, 12; reg. 9, fol. 17.

'liberty', Bologna's history is marked by the constant tension between papal, Milanese and civic political pretensions. The 1440s saw the decisive resolution of these tensions. First, the Visconti governor was removed; then a lasting settlement with the papacy was negotiated (1447); and finally an urban oligarchy was consolidated. The years 1449–50 were crucial in those developments: dissident members of the regime headed by the Bentivoglio family – the XVI – took up arms against the city and occupied some strongholds in the *contado*. In a critical situation for the XVI, in which they were accused of tyranny and were unable to control the *contado*, they received support from the new papal governor in eliminating the threat. In the years following this crisis, the XVI were transformed into a patriariate or oligarchy.¹⁰⁸ At the same time, these years were ones of economic difficulty: in the mid-1440s there was evident lack of work; this was followed by plague in 1447–9 and a widely destructive storm in the *contado* 1448.¹⁰⁹ In terms of judicial policy and practice, Bologna in 1450 was in the midst of a dual process of greater rigour in the prosecution of crime and greater leniency and oligarchical 'corruption' in its punishment: the Podestà's discretionary powers were enlarged, enforcement was militarised with the appointment of a Bargello, and a stiffening of penalties was to come in the revised statutes of 1454 (especially for nocturnal theft, neighbourhood disorders and the abduction of women); yet various forms of reduction of penalty or cancellation of prosecution seem to have grown.¹¹⁰

The total judicial caseload in 1450 was virtually halved (172 prosecutions, as against 300 in 1351), despite a slight growth in the population level. There is the same numerical dominance of brawls/wounding/homicide (two-thirds of the total), but there is no difference now between the violence of insiders and that of outsiders, indeed the only outsiders prosecuted were a handful of vagabonds.¹¹¹ The remainder of the caseload, again in contrast to a hundred years earlier, is now made up of a combination of theft and robbery (twenty-three cases) and sexual and moral cases (adultery, abduction, clandestine marriage, blasphemy, deception). These two features call for some comment. The decline in the total number of prosecutions may be further evidence for the broader pacification of society in the fifteenth

¹⁰⁸ A. De Benedictis, *Repubblica per contratto. Bologna: una città europea nello Stato della Chiesa* (Bologna, 1995), pp. 95, 126–30, 135.

¹⁰⁹ Dean, 'Criminal justice in mid-fifteenth-century Bologna', in *Crime, Society and the Law in Renaissance Italy*, ed. T. Dean and K. J. P. Lowe (Cambridge, 1994), p. 29.

¹¹⁰ *Ibid.*, pp. 28–32.

¹¹¹ ASBo, Comune, Curia del Podestà, Inquisitiones, busta 355, reg. 1, fols. 121, 131, 133, 149; reg. 2, fol. 76; reg. 3, fols. 52, 73.

century, noticed for Florence by Cohn.¹¹² This pacification is also apparent in the relative absence of cases in which the actions of judicial or police officers were resisted or contested. It may be confirmed, too, by the nature of many of the violent disputes brought to the Bolognese court: where the indictment indicates the social status of both aggressor and victim, it is clear that prosecuted violence rarely ascended or descended the social scale (see below, p. 171).

The second general feature that requires comment is the relative growth in sexual and moral cases. The registers for 1450 record five cases of abduction, four of adultery, two of rape, two of blasphemy and one of clandestine marriage. This was not a rise restricted to this one year, but was part of a fifteenth-century trend, which I have examined elsewhere.¹¹³ It seems to be witness to a greater anxiety (present also in the statutes) over the bodies of unmarried women and girls, seen as needing greater protection. Likewise, prosecution of blasphemers came to the aid of the Virgin Mary's body, indecently abused.¹¹⁴ Clandestine marriage and abduction alike appear in this year's registers as a phenomenon of the countryside, and as occurring within the same familial context of absent fathers. Thus, the indictment against one girl (*domicella*) declared that she had been living with her uncle in the *contado*, but left his house, went to an uninhabited building, and there married a man from another village, in the absence of her uncle and against his wishes.¹¹⁵ In the hills, a man was prosecuted for 'seducing' a girl, with her consent, from her uncle's house; his defence was that they had exchanged words of matrimony, but the witness statements were adjudged sufficient to submit the defendant to torture.¹¹⁶ Other cases involve the abduction, sometimes by small gangs, of girls or widows.¹¹⁷

Adultery and rape, by contrast, appear as phenomena of the city, especially of the working and migrant population. Among the cases are: a man who kept a married woman, who prostituted herself as his mistress, against her husband's wishes; the wife of a textile worker who was kept as a mistress by a barber; the wife of a Hungarian living in Bologna who kept a German as her lover (she claimed, in her defence, to be a prostitute); a German weaver who committed adultery with the wife of the old man with whom he lived.¹¹⁸ The two prosecuted rapes were of a scandalous variety: four

¹¹² Cohn, 'Criminality and the state in Renaissance Florence, 1344–1466', p. 215.

¹¹³ Dean, 'Fathers and daughters', pp. 98–9.

¹¹⁴ 'per la potta [cunt] dela Vergine Maria': ASBo, Comune, Curia del Podestà, Inquisitiones, busta 355, reg. 2, fol. 100. The second case was milder ('A dispetto de dio'): *ibid.*, reg. 3, fol. 214.

¹¹⁵ *Ibid.*, reg. 1, fol. 107. ¹¹⁶ *Ibid.*, reg. 1, fol. 92.

¹¹⁷ *Ibid.*, reg. 1, fol. 135; reg. 2, fols. 26, 59; reg. 3, fol. 179.

¹¹⁸ *Ibid.*, reg. 1, fols 80, 117; reg. 2, fols. 113, 146–7.

inhabitants of the city (including a goldsmith from Parma and a shoemaker) went at night to the house of Anna of Poland, forcibly seized her daughter Dorotea, took her to a garden behind the church of San Domenico, and raped her.¹¹⁹ A man went to the *Monastero delle convertite* and fornicated with a nun.¹²⁰ This set of court records thus presents us with judicial responses to disruptions to public order caused by the situation of fatherless girls or by the unstable sexual relations of migrants. Whether clandestine marriage was really more common in the countryside and adultery in the city, or whether this is an artificial representation created by the preferences of denouncers and prosecutors, is unclear.

The complete absence of annotations revealing the outcomes of trials in these registers makes it impossible to make any detailed comparison with those of 1351, but what is much more in evidence in 1450 is executive and discretionary action to terminate prosecutions. Thirty-four cases (one-fifth) were ended in this way, as opposed to ten (one-thirtieth) in 1351. Such intervention has been noted as a feature of the previous regime in Bologna in the 1440s, and seems to be a growing feature of the mid-fifteenth century.¹²¹ It was not a novelty, as it was already present in the late thirteenth century; it seems to have accompanied any expansion of judicial *arbitrium*.¹²² Among the terminations in 1450 were some that could have happened at any time: for example, cases against clerics (in Bologna this usually meant students) 'inhibited' by the bishop's vicar, and cases against husbands or employers for hitting their wives or servants. Apart from these, there are several significant groups of curtailed trials. Ten were halted when the defendant made a plea for a pre-sentence ruling from the judge: by this stage, most of such defendants had already submitted a plea of poverty and a notarial document recording pacification with their victim, and now they asked the judge to indicate what the fine would be if the trial continued to a conclusion; if the defendant paid that sum into court at once, the trial was not just halted, but cancelled, as if it had never taken place.¹²³ Those eligible to benefit from this mechanism were mainly those who had committed minor acts of physical injury – one blow with a bread-knife, for example, or a bloodless blow to the arm with a cudgel¹²⁴ – and the occasional thief who could appeal

¹¹⁹ Ibid., reg. 2, fol. 88. ¹²⁰ Ibid., reg. 2, fol. 134.

¹²¹ M. Longhi, 'Niccolò Piccinino in Bologna 1438–1442', *Atti e memorie della Deputazione di storia patria per la Romagna*, 3rd series, 24 (1905–6), pp. 228–30; Antonelli, 'La magistratura degli Otto di Guardia a Firenze', pp. 15–18; Stern, *The Criminal Law of Medieval and Renaissance Florence*, p. 15.

¹²² Vallerani, *La giustizia pubblica medievale*, pp. 52–6.

¹²³ On this, see Dean, 'Criminal justice in mid-fifteenth century Bologna', pp. 28–9.

¹²⁴ ASBo, Comune, Curia del Podestà, Inquisitiones, busta 355, reg. 2, fols. 44, 70, 105, 119, 130, 161; reg. 3, fols. 45, 78, 248, 266v.

to the judge on the basis of youth or sex.¹²⁵ The city government could also intervene to curtail trials by reason of the poverty of the defendant: thus a man prosecuted for brawling and inflicting a bloody blow to his adversary's head was allowed to go free because of his 'great poverty', and because he had made peace with his victim.¹²⁶ A second group were beneficiaries of the governor's clemency: if they paid a sum of money to some current public building project – for example a new fountain, or the governor's new palace – then he would instruct the judge to halt proceedings. This was available to a range of more serious criminals: thieves, killers, gang-rapists, coin-clippers.¹²⁷ Allied to this group was the blasphemer who was excused the statutory penalty provided he visit a local Marian shrine barefoot and offer a large candle.¹²⁸ The third group is more miscellaneous. They receive clemency as a result of pleading or petitioning: an adulterer who, having explained his unusual living arrangements with an elderly German and his Flemish wife, was released from custody on surety not to re-offend;¹²⁹ a confessed wife-batterer who was also released on similar assurance;¹³⁰ brawlers who claimed to have been provoked;¹³¹ and *contadini* prosecuted for killing a man and stealing his horse, who were acquitted when the city council ruled that this was an act of war and done 'animo predandi'.¹³² These three groups reveal what was needed to avoid penalty, the qualities that could induce a judge to use his discretion, or the city authorities to intervene: poverty, penitence and peace, first of all, but also payment, or plausible petition. Punishment is thus invisible in this register (no drawings of hanged men); what the register offers instead is a greater role for the mitigation, avoidance or replacement of penalty.

The evidence from Bologna is ambiguous. On the one hand, judicial practice was almost wholly inquisitorial, more physical punishment was used, and the court can be seen enacting judicial policy to repress sexual and moral offences. On the other hand, the elaboration of practices to discount or convert penalties suggests that concord, rather than punishment, remained an important aim of judicial action.

LUCCA 1351, 1365, 1450

Lucca in this sequence appears as something of a hybrid, sharing features of both Savonese and Bolognese judicial practice. A strong contrast with

¹²⁵ Thus Dorotea from Poland, 'considerata fragilitate sexus et iuventutis': *ibid.*, reg. 2, fol. 150.

¹²⁶ *Ibid.*, reg. 1, fol. 105.

¹²⁷ *Ibid.*, reg. 1 fol. 151; reg. 2, fols. 18, 74, 88, 126–129v, 140.

¹²⁸ *Ibid.*, reg. 2, fol. 100. ¹²⁹ *Ibid.*, reg. 2, fols 146–7. ¹³⁰ *Ibid.*, reg. 3, fol. 222.

¹³¹ *Ibid.*, reg. 3, fols. 170, 189. ¹³² *Ibid.*, reg. 3, fol. 83.

Bologna is evident from the trial record for 1351. In the first semester the Podestà's court held just forty-nine trials. Most of these (thirty-seven) were for assault or brawling or aggressive behaviour. Beyond this the range of offences prosecuted was narrow, and mainly related to the infringement or damage of property rights. Accusations were common, though outnumbered by inquisitions based on official denunciation. There was only one clear case of inquisition on the basis of *fama*.¹³³ The prosecuted violence mainly consists of punches and kicks, sticks and stones, with a small number of wounds with swords or other bladed weapons.¹³⁴ Some of these 'wounds' were very slight, causing no more than nosebleeds or torn clothing, and none is described as endangering life. In addition to the slightness of injuries, other features of accusatorial culture are also present: a relatively high proportion of acquittals (twelve), a number of abandoned accusations (two), and inquisitions that were started but then halted, giving way to trial on the basis of an accusation by the victim.¹³⁵ Further evidence of the influence of the injured party on the course of trials comes from the case of a man prosecuted by inquisition for pushing his own brother to the ground, causing him to injure his nose; after the start of the trial, the victim appeared in court to declare that he did not want his brother to be convicted for this, and referred to the city statutes as allowing him to intervene in this way.¹³⁶ Yet another sign of the court being used by disputants is the presence of 'criss-cross' accusations, where the same characters feature in separate trials, but with their roles switched, the accuser becoming the accused.¹³⁷ Fully a dozen trials were interrupted for some reason: some were remitted to other judges; in three cases the defendants were declared to be under age; one case was out of time.¹³⁸ Note, however, that there was no instance of intervention by the political authorities. In two cases, the court issued a capital ban, each time for homicide, but in one of them the ban was later cancelled following payment received from the killer.¹³⁹

The material available for 1351 is, however, unsatisfactory in a comparative study, for two reasons: first because it does not record the outcomes of trials, and secondly because it seems to under-represent judicial activity. Registers

¹³³ ASLu, Podestà di Lucca, 4824 (no foliation), 10 Jan. A trial for assault.

¹³⁴ For wounds with swords, etc.: *ibid.*, 3 Jan., 5 Jan., 10 Jan., 26 Jan., 19 Feb., 6 March; 4825, 12 May, 28 May, 8 June, 16 June.

¹³⁵ For the latter phenomenon: *ibid.*, 4824, 8 Jan.; 4825, 18 May.

¹³⁶ *Ibid.*, 4825, 25 May.

¹³⁷ Three pairs of such cases: *ibid.*, 4824, 6 March and 4825, 12 May; 4825, 18 May and 24 May; 4825, 8 June and 13 June.

¹³⁸ *Ibid.*, 4824, 20 Jan., 26 Jan., 30 Jan., 16 Feb., 19 Feb., 18 March; 4825, 14 May, 28 May, 18 June.

¹³⁹ *Ibid.*, 4825, 14 May.

from the following decade correct both these problems. For example, in the first semester of 1365 the Podestà's court handled seventy cases. The majority of these were initiated by a denunciation from local officials (sixty-two). As is to be expected, assault, brawling and aggressive behaviour form the bulk of prosecutions (fifty-seven). The remainder comprise five homicides, two insults, one theft and a small group of cases in which judicial officials either failed in their duty or were subject to opposition. What the prosecuted violence shares with the 1351 register is the slightness of injury. Assaults using fists or feet, sticks or stones constitute over half of the total, and where real weapons were used, their handles were used almost as often as their blades. The outcomes of trials – recorded thoroughly by the notary this year – reflect this pattern of injuries. Forty-six cases, involving fifty-seven defendants, ended in a monetary penalty. The level of these fines was mostly low: the most frequent fine was just 2 *lire*, and the median was 4 *lire* 10s. Only one case resulted in a capital penalty that was actually implemented: a thief from the Lucchese *contado*, who confessed to twenty-one small thefts from houses in the city, was beheaded.¹⁴⁰ Among the nine trials that were terminated before sentence, three types are noteworthy. When a city official denounced two males, one from the *contado*, one from the city, for an exchange of blows with stones, the immediate impression is that these were adults engaged in a conflict; but the judge ended the case on receiving information from the city council that both defendants were boys aged under nine and a half years.¹⁴¹ When husbands hit their wives in the face or head, causing bloodshed, the judge accepted the men's claims that the city statutes both allowed them to do this and prevented the judge from trying such injuries.¹⁴² In four further cases, the then lord of Lucca, the doge of Pisa, intervened: commuting the thief's death by hanging into decapitation, 'ex gratia'; simply ordering proceedings to be halted; informing the judge that he had already pacified a dispute that was the subject of a trial.¹⁴³

In addition to the Podestà, the Capitano del Popolo also now handled some criminal cases (this was not the case in 1351). The relevant register covers the year from May 1365 to May 1366. It contains seventeen trials, all by inquisition, in all of which the defendant confessed. Punishment is not recorded. To some extent, the Capitano's caseload mirrored that of the Podestà: four cases involved punches to the face or chest. One of the prosecuted assaults concerned the throwing of a stone and a bloodless blow to the

¹⁴⁰ Ibid., 11 Feb.

¹⁴¹ Ibid., fol. 67.

¹⁴² Ibid., 16 Feb., 4 March.

¹⁴³ Ibid., 11 Feb. and fols. 89, 97, 144.

back with a pair of scissors.¹⁴⁴ However, the rest of the caseload suggests that the Capitano was meting out a different sort of justice. The other assaults involved multiple blows to the head with weapons.¹⁴⁵ There were five prosecutions for theft, mostly by foreigners (from Pisa, Florence, Montecatino, Cologne), and some by servants.¹⁴⁶ Three attempted rapes were tried.¹⁴⁷ Five men were charged with setting ambushes in the Garfagnana to seize, rob and ransom merchants and muleteers.¹⁴⁸ Lastly, Ruggiero from Sicily confessed to fraudulent preaching, with intent to earn money from an ointment which he claimed to have obtained from some weather-demons on a hill-side near Catania, and which he advertised as curing illnesses caused by corrupt air.¹⁴⁹ These are the sort of public-security cases absent from the registers of the Podestà: protecting the roads from robbers and kidnappers; protecting the Lucchese public from charlatans; protecting Lucchese houses from the predations of thieves; protecting women from sexual assault. This sort of justice was difficult to deliver in a system dependent on official denunciation.

But for how long was such sterner justice present in Lucca? The registers for 1450 show the presence once again of a gentler regime. Two registers cover the first and second semesters.¹⁵⁰ One contains just twenty cases, the other nineteen. Two-thirds of these cases were assaults, most of them of the less serious kind, with injuries caused by punches and stones. Only a handful involved weapons of any sort.¹⁵¹ A scatter of homicide, insult, blasphemy, theft and land-occupation makes up the rest of the registers. Most of these trials were initiated by official denunciation; a dozen *ex officio* inquisitions dealt mainly with assault. Nor in this year was there a Capitano del Popolo to take a more robust approach to *ex officio* investigation: by 1450 the office of Capitano was almost moribund and there is no register of his judicial activity between 1434 and 1464, and that for the latter year contains just four cases.¹⁵² There was, though, a Capitano del Contado. The nearest in time of his registers is that for the first semester of 1452: this shows him dealing mainly with those who kept pigs in prohibited places or with collecting fines for disobedience to his orders; he did also prosecute

¹⁴⁴ Capitano del Popolo, 4, 10 May. ¹⁴⁵ Ibid., 27 Apr., 9 July.

¹⁴⁶ Ibid., 8 June, 10 Sept., 15 Jan, 14 Feb. ¹⁴⁷ Ibid., 1 Sept., 14 May, 16 May.

¹⁴⁸ Ibid., 22 Sept.

¹⁴⁹ Ibid., 28 Feb.; C. Meek, 'Men, women and magic: some cases from late medieval Lucca', in *Women in Renaissance and early modern Europe*, ed. C. Meek (Dublin, 2000), p. 49.

¹⁵⁰ There is a third register, but its script is illegible.

¹⁵¹ Podestà di Lucca, 5251, fols 75, 79; 5252, 18 July, 31 Aug., 9 Sept., 14 December.

¹⁵² Capitano del Popolo, 32: two cases of carrying prohibited weapons, one of homicide, one of resistance to a tax collector.

by inquisition two cases of assault and one of conspiracy.¹⁵³ So the trials in the Podestà's registers do seem to constitute the main judicial activity in this year.

Lucca offers anything but a linear progression. In the middle of the fourteenth century, *arbitrium* seems very limited: a narrow range of offences was prosecuted; accusations were still common; there is evidence of instrumental use of criminal justice. The Capitano del Popolo, though, made more use of inquisition, probably used torture, and acted more in the interests of public security. By the 1450s, there is little evidence of this sort of judicial action, as *ex officio* inquisition turns to dealing with small crimes, and the middle of the fifteenth century generated a much smaller caseload. Political context may seem to be the key to this contrast. In the 1350s and 1360s, Lucca was under Pisan rule, and though one historian has argued that Pisa aimed to ensure orderly and fair governance, she also notes that Pisa did revive the post of Capitano del Contado, a type of Bargello or bandit catcher – which was clearly a sign of greater incisiveness in law enforcement.¹⁵⁴ On the other hand, the period from 1440 has been defined as one of 'unquiet stability' in a Lucca that had recovered both its independence and its republican constitution, and was dominated by a small, socially homogeneous oligarchy.¹⁵⁵ The pattern of judicial action seems to reflect this picture.

MANTUA, 1432, 1462

The surviving records of signorial, princely and royal governments in late medieval Italy offer nothing to compare, either in quality or quantity, with the judicial records of republican or oligarchical regimes, such as Bologna, Lucca, Florence or Venice. Some registers survive for Visconti Milan,¹⁵⁶ as also for Reggio under various signorial families (see below, p. 170), while for Modena there are some scattered fragments. It was for this reason that David Chambers and I examined a different sort of documentation in our book on a special judge who served the Gonzaga in Mantua and then the Este in Ferrara.¹⁵⁷ Here though I shall take some registers from fifteenth-

¹⁵³ Capitano del Contado, 52.

¹⁵⁴ C. Meek, *The Commune of Lucca under Pisan Rule 1342–1369* (Cambridge, Mass., 1980), pp. 20–54, 42.

¹⁵⁵ M. B. Bratchel, *Lucca 1430–1494: The Reconstruction of an Italian City-Republic* (Oxford, 1995), pp. 51–67, 86–9, 94, 104.

¹⁵⁶ Verga, 'Le sentenze criminali dei Podestà milanesi'; C. Santoro, 'Per la storia dell'amministrazione della giustizia a Milano', in Santoro, *Scritti rari e inediti* (Milan, 1969).

¹⁵⁷ D. S. Chambers and T. Dean, *Clean Hands and Rough Justice: An Investigating Magistrate in Renaissance Italy* (Ann Arbor, 1997).

century Mantua. These are not full trial registers, but summary records of the sentences (of condemnation or acquittal) published by the Podestà at irregular intervals during the year. Taking two years of these records suggests that princely justice underwent a significant transformation in the middle of the century. In 1432 (March–December), a total of 136 sentences were awarded (only nine were acquittals, the rest were condemnations, mainly *in absentia*). The profile of the cases offers nothing out of the ordinary. Over half were assaults. With the exception of insult – 13 cases – other crimes registered in only single figures: 4 homicides, 7 thefts, 4 blasphemies, 3 abductions, 2 attempted rapes, and so on. There is some curiosity value in the odd case: a shoemaker tried for repeatedly throwing stones at the door of a baker's house; a man tried for paying nocturnal visits to the window of a house in order to speak to the householder's daughter; a carter who pushed a goldsmith into the mud and dirtied his clothes.¹⁵⁸ However, three features are particularly evident in this register. Firstly, the dominance of inquisition over accusation or denunciation as the method of initiating trial: accusations were largely reserved for insult and property cases ('disturbing possession'). Secondly, the very slight evidence of corporal or capital punishment. The killers and rapists were condemned to beheading or amputation of a hand,¹⁵⁹ robbers to hang,¹⁶⁰ thieves to a whipping or loss of an ear unless they paid their fines,¹⁶¹ and blasphemers to time in the pillory.¹⁶² But as all these sentences – with the exception of only one blasphemer and a female thief – were issued against contumacious persons, there is a possibility that none was ever implemented. Thirdly, there was a low level of resistance to the forces of law and order: one of the Podestà's staff was killed, and there were a couple of cases of resistance in the form of blasphemy and punching, but that was all.¹⁶³

By 1462, all three of these features seem to have changed. The sentences for that year (January–December), are not only much more numerous (totalling 309), but differently distributed. Now inquisitions are in the minority (124), and accusations dominate (183); two cases do not specify whether they involve accusation or denunciation. In 1432, accusations are used mainly for insult and disturbed possession, and for the odd case of bloodless assault, gambling, blasphemy, and theft. In 1462 accusations of insult and disturbing possession alone total over a hundred, and the list

¹⁵⁸ ASMn, Archivio Gonzaga, 3452, fols 204v, 205, 211.

¹⁵⁹ Ibid., fols. 202, 203v, 205v, 207, 207v, 208, 211v.

¹⁶⁰ Ibid., fols. 210, 211. ¹⁶¹ Ibid., fols. 207v, 212, 213. ¹⁶² Ibid., fols. 203, 204.

¹⁶³ Ibid., fols. 203, 207v, 208. Cf. the more frequent failures to make arrests in Florence: Manikowska, "Accorr'uomo", pp. 533, 540.

of other crimes is a long one: assault (17 cases), arms-carrying (15), perjury (10), blasphemy (10), aggressive behaviour (9), theft (7), gambling (2), fornication (1) and fraud (1). The court is obviously being used in a very different way by those who had suffered injury to their persons, their property and their honour. This may be partly due to the apparent disappearance of denunciation by local officials (the 'consul' of this village, or the 'vicar' of that place). Partly replacing these officials is a new figure, the Capitano del Divieto, or 'prohibition enforcer', who made a number of these 'accusations', mostly for arms-carrying, blasphemy and Sunday trading. These two changes happen together: local denunciations disappear in 1446, the Capitano del Divieto appears in 1447.¹⁶⁴ At the same time, the number of accusations increases until by 1450 they exceed the number of inquisitions. This seems to represent a shift in the administration of justice, from reliance on unpaid local officials (men of the district) to hired ducal officials (men recruited abroad). The activity of the Capitano del Divieto also partly explains the rise in cases of resistance to authority: the numerous blasphemies and insults he reports may well have been directed at him;¹⁶⁵ one captured blasphemer was snatched from his hands and released;¹⁶⁶ and eighteen men were condemned to death for an armed assembly that prevented him from performing his office.¹⁶⁷ Resistance was shown not only to the Capitano del Divieto, for the Podestà's staff were also impeded.¹⁶⁸ Moreover, local inhabitants were prosecuted for failing or delaying to capture and deliver known malefactors.¹⁶⁹ Also more evident is the number of criminals held in prison and very likely to have suffered the corporal or capital punishments appointed: three homicides condemned to beheading,¹⁷⁰ two thieves condemned to hang and a third to be whipped,¹⁷¹ a rapist and a counterfeiter each to be decapitated,¹⁷² a concubine to be shaved and pilloried,¹⁷³ and an assortment of malefactors waiting to lose a hand – a man who aided and abetted an assault, a notary who falsified a deed, a jail-breaker, a perjurer.¹⁷⁴ Where there is evidence of sentences being carried out, the period 1459–63 shows a considerable rise over the preceding period.¹⁷⁵

One final and significant observation. In August 1462, a citizen was fined nearly 7 ducats for sending a hawk into the city 'covertly' and without presenting it to the court; and the boatman who carried it for him was

¹⁶⁴ Chambers and Dean, *Clean Hands and Rough Justice*, p. 64.

¹⁶⁵ ASMn, Archivio Gonzaga, 3453, 31 Mar., 26 June, 10 July, 10 Nov.

¹⁶⁶ Ibid., 30 Jan. ¹⁶⁷ Ibid., 26 June. ¹⁶⁸ Ibid., 31 May.

¹⁶⁹ Ibid., 7 May, 31 May, 2 Oct. ¹⁷⁰ Ibid., 13 Jan., 10 July, 4 Dec.

¹⁷¹ Ibid., 3 Apr., 7 May, 26 June. ¹⁷² Ibid., 31 Mar., 31 Dec. ¹⁷³ Ibid., 7 May.

¹⁷⁴ Ibid., 28 Feb., 7 May, 31 May, 17 July.

¹⁷⁵ Chambers and Dean, *Clean Hands and Rough Justice*, pp. 73–4, 78.

similarly fined.¹⁷⁶ This touches on an aspect of justice that was present in princely and royal Italy, but absent in republican Italy: punishment of infringements of the ruler's hunting rights. Hunting preserves were fiercely protected. In Ferrara in 1492, the ducal Hunt Master fined a man the considerable sum of 50 ducats for killing a boar.¹⁷⁷ King Ferrante of Naples was said to have poachers' hands amputated,¹⁷⁸ while the dukes of Milan issued a stream of edicts to protect parks, seasons and game, and to penalise theft or injury of ducal hunting dogs.¹⁷⁹

At Mantua, some emphasis has recently been laid on the importance of the central decades of the fifteenth century in the evolution of the structure of the Gonzaga lordship, the transformation of government and administration and the related definition of social elites around the Gonzaga family.¹⁸⁰ This transformation also affected the criminal justice system and its visible, penal outcomes. The contrast between two sample years is accounted for by the administrative changes associated with Ludovico Gonzaga (1444–78). A popular consultation in 1430 had revealed dissatisfaction with justice ('its seat a neglected ruin, its officials reduced in number and dignity').¹⁸¹ Ludovico's reign saw an increased prosecution and punishment of sexual offences; significant changes in staffing and reporting; and increased concern regarding crime, leading to greater use of harsh, exemplary punishments.¹⁸² As the Forlì chronicler, Giovanni di maestro Pedrino, observed in 1455, 'nowadays, lords are no longer feared unless they have severe, pitiless justice'.¹⁸³

It has been said that court activity is always linked to politics: 'examining the activity of a court without first having clearly revealed not only its procedures, but also all the structures that allowed it to function and its room for action in relation to central power, can be a misleading and deceptive operation'.¹⁸⁴ The structures that allowed a criminal court to function were

¹⁷⁶ ASMn, Archivio Gonzaga, 3453, 27 Aug., 31 Aug.

¹⁷⁷ ASMo, Camera ducale, Mandati, reg. 32, fol. 123; and see Chambers and Dean, *Clean Hands and Rough Justice*, p. 44.

¹⁷⁸ C. De Frede, 'Ferrante d'Aragona e la caccia, con alcune considerazioni politico-sociali', *Archivio storico per le provincie napoletane*, 115 (1997), pp. 19–23.

¹⁷⁹ *I registri dell'ufficio degli statuti di Milano*, ed. N. Ferorelli (Milan, 1920), pp. 12, 18, 25, 42, 44, 103, 106, 107, 108, 109, 110, 113–15, 117–19, 121–3, 124, 126–8, 240, 249, 251, 291, 294, 297.

¹⁸⁰ I. Lazzarini, *Fra un principe e altri stati: relazioni di potere e forme di servizio al Mantova nell'età di Ludovico Gonzaga* (Rome, 1996), pp. ix–x.

¹⁸¹ Chambers and Dean, *Clean Hands and Rough Justice*, p. 60.

¹⁸² *Ibid.*, pp. 71, 79–81.

¹⁸³ Giovanni di Maestro Pedrino depintore, *Cronica del suo tempo*, ed. G. Borghezio and M. Vattasso (2 vols., Rome, 1929–34), vol 2, p. 294.

¹⁸⁴ C. Povoio, 'Contributi e ricerche in corso sull'amministrazione della giustizia nella repubblica di Venezia in età moderna', *Quaderni storici*, 44 (1980), p. 617.

physical, official and cultural: defined and legally protected judicial spaces; officials to report, capture and detain suspects; and a willingness among victims and witnesses to report their injuries and their testimony. However, that functioning was always conditioned by the relation to power: the means of suspending or terminating trials and of reducing or waiving penalty. Both the structures and the relation to power were subject to change: the location and security of law-courts, prisons and gallows; the number, activity and vigour of officials; the balance between judge-initiated and victim-initiated trial; the strategies of victims. The trial record allows us to see some of these changes and their relation to politics. What is striking, however, is the absence of linear evolution: justice in Savona looks much the same in the middle of the fifteenth as in the middle of the fourteenth century; the stronger inquisitorial presence in Bologna is increasingly offset by political intervention; in Lucca, a moment of greater inquisitorial energy passes; greater harshness and severity were marks of princely rule in Mantua after the middle of the fifteenth century. What is also clear is that there was no general evolution in prosecutions from private honour to public security. In Bologna public order cases – especially sexual morality – did grow, while insult cases diminished; but at Savona, the same mix, in the same proportions – private injury, mostly – is apparent in both years examined. In Mantua, paradoxically, the rise in public security prosecutions is accompanied by an inversion of the relation between accusations and inquisitions.

Trial records as a source thus pose complex problems of interpretation and use. The primary narrative, of the trial, has to be considered contextually, in its relation to the functioning of the court and the character of local justice. The secondary narrative, of the crime, is marked by narrative reconstructions that are shaped by judicial categories and discourse, as well as by the choices and strategies of those who report the crimes. In trying to connect the legal and the social, the historian has to address both. From a comparative perspective, the major finding of this chapter lies in the absence of uniformity or uniform development across the types of city surveyed here: justice in the small town looks very different from that in the big city; justice in the principality looks more repressive. This is not a conclusion that could be reached by studying Florence or Venice alone.

Chronicles

Italian urban chronicles are rich sources for social history, because of the great miscellany of information they contain. Here they will be used to reveal values, attitudes, expectations and moralisations regarding crime, policing and punishment, as well as aspects of criminal justice that are not otherwise accessible. As Michael Clanchy has recently observed, until recently ‘in the history of law, at least as far as the Middle Ages are concerned, no one had focused systematically on what expectations people had of it’.¹ Italy has been absent from recent discussion of expectations of the law, so this chapter will take chronicles from over a dozen cities across late medieval Italy (L’Aquila, Bologna, Brescia, Ferrara, Florence, Forlì, Lucca, Modena, Naples, Padua, Parma, Perugia, Rome, Siena) to investigate this question. Chroniclers respond chiefly to two moments in the history of individual crimes and their punishment, namely, the committing of the crime and the enforcement of the law. In telling of the crime, chroniclers provide a range of secular explanations of a kind that is wholly absent from the trial record. In telling of law-enforcement, chroniclers reveal emotional responses to policing and punishment, both their own and those of the urban crowd. Chroniclers, of course, report the unusual and the extraordinary, and one must beware of treating these as the norm. Using such reports to extract attitudes to crime and justice helps avoid this danger.

The approach adopted here is a synthetic, combinatory one. Specialists in the study of chronicles often recommend that individual chroniclers be fully contextualised, by providing information about their social and cultural positions (education, occupation, milieu), and about the cities in which they wrote (large or small, republican or lordship).² The historian

¹ ‘Foreword’, in *Expectations of the Law in the Middle Ages*, ed. A. Musson (Woodbridge, 2001), p. ix.

² B. Guenée, ‘Introduction’, in *L’historiographie médiévale en Europe*, ed. J.-P. Genet (Paris, 1991), p. 14; Guenée, ‘Histoires, annales, chroniques: essai sur les genres historiques au Moyen Âge’, *Annales*, 28 (1973), p. 998; A. Vasina, ‘Medieval urban historiography in Western Europe (1100–1500)’, in *Historiography in the Middle Ages*, ed. D. Mauskopf Deliyannis (Leiden and Boston, 2003), pp. 321–2.

should also take account of the evolution of chronicle-writing during the fourteenth and fifteenth centuries, as official, 'civic' works gave way to historiography more overtly connected to princely systems of power.³ While in no way denying the force and value of these two recommendations, I want to point to their disadvantages: first, they would seem to exclude from consideration anonymous chronicles, or chronicles with contested, multiple or indeterminate authorship, of which there are many; and secondly, they create an obstacle to generalisation. Certainly a fully contextualised study of individual chroniclers' responses to crime and justice would be a valuable theme for future research, but the purpose of this chapter is to look for common elements among a large group of chronicles in their experience and reporting of responses to crime and justice, in order to identify qualitative aspects. Chronicles from a range of cities reveal attitudes to repressive actions and methods, to the personal conduct of judges, to moments of popular or divine justice, to the treatment of convicts' bodies, and to the causes of crime.

A good place to start is with the personnel of law and order. The official who attracts most comment is the bandit-catcher or Bargello, a sometimes temporary official with authority to chase, capture and kill bandits within a city's territory. In 1335, one chronicler tells us, the citizens in power in Florence, afraid of their rivals out of power, decided to take action against the problem of bandits. So they hired a 'rigorous man' from Gubbio who was given a troop of armed men and power to act *de facto*. He chased the bandits away, fined the villages for harbouring them, and searched, successfully, for a nobleman to hang, apparently as a statement of intent. As a result, says the chronicler, everyone trembled at his name.⁴ What is striking in this brief account is the ambivalence that surrounded the appointment of bandit-catchers. They did not yet enjoy the odium meted out to them in the early modern period,⁵ but there is distaste mixed with admiration in the chronicler's comments. The writer suspects a partisan or instrumental purpose in the appointment of this Bargello: '*under the pretext of dumbfounding the bandits*', he says. He also records the surprise that the Bargello should hang a nobleman. Rigour, extra-legal powers and the

³ G. Ortalli, 'Cronache e documentazione', in *Civiltà comunale: libro, scrittura, documento* (Genoa, 1989), pp. 526–8.

⁴ *Cronaca fiorentina di Marchionne di Coppo Stefani*, ed. N. Rodolico, in *Rerum italicarum scriptores*, 2nd series, vol. 30, pt 1 (Città di Castello, 1903–5), p. 178.

⁵ S. Hughes, 'Fear and loathing in Bologna and Rome: the papal police in perspective', *Journal of Social History*, 21 (1987–8). But note that in Fabriano calling someone 'Bargello' was made a punishable offence, because of the word's negative associations and provocative value: *Lo statuto comunale di Fabriano (1415)*, ed. Avarucci and Paoli, p. 135.

capacity to instil fear are the signal features of such men. Yet the chronicler is impressed by the results: expulsion of the bandits meant that everyone could travel safely; it was no bad thing to fine the villages, even if it was sometimes wrong, because it ensured that bandits were not received and sheltered. Similar doubts and impressions marked the experience of other Bargelli. The same chronicler says of a Bargello, appointed by Florence twenty years earlier, that he was 'hard and cruel', had power 'to ignore legal formalities and to punish de facto and summarily', and did many 'harsh things'; he too was appointed as a tool of partisan power, to chase out anyone with a Ghibelline thought in his head.⁶ Clashing with the power of noblemen was one aspect of that rigour: in Rome in 1483, the Bargello hanged two robbers who happened to be servants of Antonello Savelli; and in response Savelli later killed him, along with three of his men.⁷ In Bologna, the Bargello Raffaele da Pistoia was criticised when he caught up with and killed a Bolognese exile in the territory of Pistoia: 'it seemed a cruel thing, even to the opposing faction', comments a chronicler.⁸ Given their character, and partisan use of their powers, it is unsurprising that popular justice was sometimes meted out to such men: during the Ciompi revolt in Florence in July 1378, the Bargello, Ser Nuto from Città di Castello – another 'cruel man' – was hanged and then cut up into little pieces ('mouthfuls' the chronicler says, with an obvious cannibalistic suggestion, typical of crowd violence against perceived 'public enemies').⁹ Equally, however, there could be disappointment when men given such posts turned out to be ineffective. A Siennese chronicler betrays such sentiment in his description of the Bargello in 1371: all words and show and no action.¹⁰ The man appointed in 1381 was similarly unimpressive: a man of 'little honour', 'tired'.¹¹ Though there could be doubts about the purposes and methods of these men, there were also expectations of how they should act and what they should achieve: effective, measurable action against bandits, to be gauged by safety on the roads, high-profile punishment, and a palpable terrorisation.

⁶ Ibid., pp. 119–20.

⁷ *Il diario della città di Roma dall'anno 1480 all'anno 1492 di Antonio de Vascho*, ed. G. Chiesa, *Rerum italicarum scriptores*, 2nd series, vol. 23, pt 3 (Città di Castello, 1910–11), p. 503.

⁸ *Cronica gestorum et factorum memorabilium civitatis Bononie edita a fratre Hyeronimo de Bursellis*, ed. A. Sorbelli, *Rerum italicarum scriptores*, 2nd series, vol. 23, pt 2 (Città di Castello, 1912–19), p. 96 (1461).

⁹ *Cronaca fiorentina di Marchionne di Coppo Stefani*, p. 325.

¹⁰ 'orevole entrò e disse di fare; di poi seguì che il Bargello fu uno tristo ribaldello da niente': *Cronache senesi*, ed. Lisini and Iacometti, p. 634.

¹¹ Ibid., p. 694.

The Bargello was an extraordinary appointment with specific powers; the regular judiciary – the Podestà and Capitano and their judges – had a broader range of responsibilities, but some of the same expectations attached to them. Some chroniclers give summary descriptions of the appearance, character and conduct of their city's chief judges. For example, the Sienese Donato di Neri in the 1370s and 1380s first noted whether each Podestà and 'senatore' was 'honourable' or 'dishonourable'. A large part seems to have been played in this assessment by the judge's ceremonial entry into the city, and presumably related to his dress, his theatrical 'presence' and the number and orderliness of his supporting staff.¹² Donato then gives sketches of some of the 'honourable' officials: 'wise, sober, experienced', 'a good man, and he behaved well', 'an old, good man, with prowess', and so on.¹³ The dishonourable, on the other hand, were men 'of little worth', 'precipitate', 'good-natured and fat', 'a lad of twenty-two, mad, cruel and bad. He did many enormous judicial killings out of vainglory and madness.'¹⁴ Age, sobriety and experience are thus contrasted with youth, impetuosity and complaisance. What is most striking, however, is the way that the expectations of judges are cast in gender terms: what is required is 'virile' action. That judges should conduct themselves 'in a virile fashion' in office was almost proverbial, a chorus sung repeatedly by their employers.¹⁵ Effeminacy was condemned: the Podestà of Siena in 1377 was described by a chronicler as a cad ('omaccio'), not very wise or soldierly, aged fifty, a wimp ('feminaccio').¹⁶ Lack of virility was conceived of as an absence of aggressive masculinity: not standing up to the challenges of the job. Consistently, those Podestà who were praised were those who made a memorable impression by hanging – or 'destroying' – many criminals.¹⁷ By contrast, when faced with a case of serious, organised thieving, the Podestà of Florence arrested only the small fry ('uomini leggieri'), leaving the bigger fish ('maggiori') untouched at home: the chronicler says he did not act 'virilely'.¹⁸ Other forms of virility, however, were likely to get judges into trouble. Their adulterous affairs, or sexual relations with women, drew adverse comments. The Podestà of Forlì in 1428 was one Piero Giovanni from Narni (or Terni), a person 'of little

¹² Thus 'orevole e bene accompagnato': *ibid.*, p. 785. See also pp. 682, 684.

¹³ *Ibid.*, pp. 673, 674, 669.

¹⁴ *Ibid.*, pp. 664, 671, 676.

¹⁵ Chambers and Dean, *Clean Hands*, pp. 39–40.

¹⁶ *Cronache senesi*, p. 668.

¹⁷ *Chronicon parmense*, ed. G. Bonazzi, *Rerum italicarum scriptores*, 2nd edn, vol. 9, pt 9 (Città di Castello, 1902–4), p. 79 (1299); *Liber regiminum Padue*, ed. G. Carducci and V. Fiorini, in *Rerum italicarum scriptores*, 2nd edn, vol. 8, pt 1 (Città di Castello, 1945–7), p. 346 (1301); *Nicolai Smeregli vincentini annales civitatis Vincentiae*, ed. G. Soranzo, in *Rerum italicarum scriptores*, 2nd edn, vol. 8, pt 5 (Bologna, 1921), pp. 16, 18 (1293, 1306).

¹⁸ *Cronaca fiorentina di Marchionne di Coppo Stefani*, pp. 243–4.

repute and much visited by whores', who had a brothel-girl in his entourage. 'With all due respect to the office of the Podestà', says the chronicler, 'such men should be put in charge of the brothel.'¹⁹ The Podestà of Bologna in 1355 thought it wise to slink covertly from the city at the time of his syndication, because of an affair he had been conducting with a married woman, against her husband's wishes.²⁰ He would certainly have wanted to avoid the fate of another Podestà of Forlì who in 1415 was killed by the brother-in-law of the woman he had been 'shaming'.²¹

Chroniclers did more than just censure such relations. They also used them as parts of their historical explanation. The sixteenth-century Perugian chronicler known as Graziani, drawing on earlier accounts, tells the following story. In 1432 the Podestà of Città di Castello was infatuated with a married woman. He imprisoned her husband and told him that he would not be released until his wife consented to the Podestà's sexual demands.²² The woman consulted her brothers and other kinsmen, and they told her to consent so that they could entrap the Podestà. This she did; the Podestà came to her house and was seized by her kinsmen. He was taken before the governing council, to shouts of 'Viva la chiesa e la pace', and this sparked the revolt of the city against its lord, Guido da Montefeltro.²³ There is probably too much of the Lucretia story about this for it to be credible – the myth of rebellion against monarchy accomplished through avenging a raped woman – but it shows the attraction of political narratives that locate the dynamic of change in the relations between women and power. This was part of a topos, a narrative device that explained great events in terms of personal and family tragedies.²⁴

The other sort of virile action that tended to incur disapproval was excessive haste or force in the conduct of investigations and executions. Precipitate resort to torture drew strong condemnation. In Ferrara in the 1490s, the Capitano di Giustizia, Gregorio Zampante, was condemned by chroniclers for his speedy use of cruelty in torturing suspects, and he became the criminal in popular eyes, guilty of pitiless extortion that was equated with robbery.²⁵ In 1273 the Podestà of Parma tortured a suspected

¹⁹ Giovanni di Maestro Pedrino depintore, *Cronica del suo tempo*, ed. Borghezio and Vattasso vol. 1, pp. 175, 186.

²⁰ *Corpus chronicorum bononiensium*, ed. A. Sorbelli, *Rerum italicarum scriptores*, 2nd series, vol. 18, pt 1 (Città di Castello and Bologna, 1906–40), vol. 3, pp. 49–50.

²¹ Giovanni di Maestro Pedrino, *Cronica*, pp. 52–3.

²² For the general problem of sexual exploitation by judges, see Dean, *Crime in Medieval Europe*, pp. 38–40.

²³ 'Cronaca della città di Perugia dal 1309 al 1491 nota col nome di diario del Graziani', ed. A. Fabretti, *Archivio storico italiano*, 16 (1850), pp. 364–5.

²⁴ On which see T. Dean, 'Marriage and mutilation'.

²⁵ Chambers and Dean, *Clean Hands*, pp. 154–5.

horse thief, but in response the *popolo* threw stones at his windows, and spread rumours that he had tortured this man only in order to get his hands on his beautiful daughter.²⁶ Killing through torture – inflicting death ‘on the rope’ as it was called – could anger both governments and kin. When this happened to a Bargello in Siena, he reported the fact and then hid.²⁷ When the Capitano del Popolo in Perugia was eventually forced to hand over the body of a suspect killed under torture, the dead man’s relatives paraded it – sans teeth, sans penis, with burned feet – in front of the government palace, to great lamentation and protest, causing the Capitano to flee.²⁸ Equally reprehensible was executing criminals at night or in unusual places. Hangings or beheadings near or outside a brothel – as at Forlì in 1425 or Siena in 1490 – were strongly disapproved of, as ‘very indecent’ or ‘undeserved’.²⁹ When the Sienese ‘executor of justice’, following instructions, hanged some killers on the spot without even letting them confess their sins, he was ‘much reprehended and blamed’.³⁰

There were occasions, however, when the urban populace wanted greater or speedier justice against wrongdoers. What were in effect lynchings – executions ‘a furia del popolo’ – are recorded almost throughout the period. In 1322 there was a popular rising in Urbino, caused by taxation. The lord of Urbino, Count Federico da Montefeltro, surrendered himself to the crowd, ‘as a dead man’, with a rope round his neck, and asked for mercy: he was first killed ‘a furor’, then dragged through the city to a ditch, and buried in horse-dung. This was God’s judgement, says the chronicler, on the Montefeltro family for always being in opposition to the Church.³¹ In a revolt in Florence in 1343, a *gabelle* officer, fleeing in disguise, was recognised: he was seized by a group of boys, his clothes were torn and he was dragged through the city to the gallows, where he was hung up by one foot and his throat was cut ‘as if he were a pig’.³² Another case occurred in Florence in the 1360s, following that city’s military campaign to recapture the rebellious town of San Miniato. When the ringleaders of

²⁶ *Chronicon parmense*, pp. 29–30.

²⁷ *Cronache senesi*, p. 699. For other examples of deaths under torture: *ibid.*, p. 800; *Cronaca fiorentina di Marchionne di Coppo Stefani*, p. 88; *Corpus chronicorum bononiensium*, vol. 3, p. 572; Chambers and Dean, *Clean Hands*, pp. 116–18. On the liability of judges for such deaths, Gandino, vol. 2, pp. 170–1; Zordan, *Angelo Gambiglionni*, pp. 160–1.

²⁸ ‘Cronaca perugina inedita di Pietro Angelo di Giovanni’, ed. O. Scalvanti, *Bollettino della Deputazione di storia patria per l’Umbria*, 4 (1898), p. 105 (1455). A similar piece of ‘revenge drama’ took place in 1465: *ibid.*, 9 (1903), p. 50.

²⁹ Giovanni di Maestro Pedrino, *Cronica*, p. 132; *Diarium senense Allegretti de Allegretis*, ed. L. A. Muratori, in *Rerum italicarum scriptores*, (23 vols., Milan, 1723–51), vol. 23, col. 825.

³⁰ *Cronache senesi*, p. 766 (1410).

³¹ *Cronache senesi*, pp. 391–2. For this event, see G. Franceschini, *I Montefeltro* (Varese, 1970), pp. 215–16.

³² *Cronaca fiorentina di Marchionne di Coppo Stefani*, p. 208.

the revolt were taken to Florence, the troops escorting them had difficulty protecting them against stones thrown by the Florentine *popolo*, which was angered at the costs and shortages caused by the war. The prisoners were eventually delivered to the Podestà, they were beheaded, and their bodies were carried off in coffins for burial. But, 'by divine judgement', says the chronicler, some boys coming out of school chanced upon this procession, chased off those bearing the coffin of Messer Filippo Lazzarini, turned out the corpse and dragged it around. A game of tag then ensued, with the corpse repeatedly replaced in the coffin by the bearers, and pulled out by the boys. The boys could not, at the last, be stopped from throwing the body into the river. This was said to be divine judgement, reports the chronicler, as Filippo Lazzarini had hoarded grain during the siege of San Miniato.³³ Another episode of such crowd behaviour occurred in Bologna in 1399, when artisans occupied the piazza and deposed the regime led by Carlo Zambecari. They then seized an old man, Count Antonio da Bruscolo, who had apparently done nothing more serious than to occupy the house of an exiled opponent of the Zambecari.³⁴ He was taken to the piazza, and the *popolo* wanted to have him hanged, but he resisted, shouting that no one in his family had ever been hanged, and refusing to climb the ladder to the gallows. So instead he was tied to the ladder and killed 'a furor di popolo' with lances.³⁵ In Parma in 1478, the attempt to bury in consecrated ground the body of a widely hated usurer was thwarted by a group of boys who forced their way into the church, took the body from its tomb, dragged it around the city, hung it on a tree, and finally threw it into the river.³⁶

There are many ways of approaching and interpreting such killings. The striking sense of sacrality that some of these accounts reveal ('divine judgement') connects them both to a system of historical explanation in which God intervenes in the world to show his approval or anger, and to the way that the reporting of executions draws forth religious comments from chroniclers. It also connects to tales of miraculous punishments (on which more below) and stories of great wrongdoers eventually receiving their just deserts. These are signs of a narrative way of thinking in which punishment

³³ Ibid., pp. 272–3.

³⁴ This innocence might well be fictive, given the enmity between the Bruscoli and other rural noble families: O. Vancini, 'Bologna della chiesa (1360–1376)', *Atti e memorie della Deputazione di storia patria per la Romagna*, 3rd series, 25 (1906–7), pp. 28–30.

³⁵ *Corpus chronicorum bononiensium*, vol. 3, p. 470.

³⁶ *Diarium parmense*, in *Rerum italicarum scriptores*, ed. L. A. Muratori, vol. 22 (Milan, 1733), cols. 280–1.

is always deserved, and those deserving punishment always suffer it. As the chronicler and storyteller Giovanni Sercambi put it, 'reason demands that he who does ill be punished in due course'.³⁷ Then there is the role of boys as avengers of unpunished wrongs against the community (usury, grain-hoarding).³⁸ Boys played a ritual part in demanding and performing justice: in Parma they demanded the usurer's corpse from the bishop, and only when this was refused did they break into the church; in Milan they shouted 'Hang the thief!' at a police official dismissed for taking a bribe, thus forcing him to stay in his house for months on end;³⁹ in Modena it was boys who searched the city in 1470 for a fugitive robber, 'and there wasn't a hole that they didn't search', and boys who threw eggs at the head of a woman being whipped for adultery in 1497.⁴⁰ We should note too how some of these mob killings imitated public executions, particularly those of 'infamous' criminals: especially dragging and hanging by the foot, which was associated with traitors. But this *modus necandi* is mixed with those of the abattoir ('as if he were a pig'), in a way that indicates some disapproval, on the part of the chronicler, of treating a human body with the same despatch as an animal to be consumed. When a noble traitor's body was first dragged, then mutilated in Sicily in 1337 (the fingers cut off, the eyes plucked out, the teeth smashed, the innards fed to dogs, the remainder cut limb from limb 'like a calf in the butchery') this was condemned by the author as failing in the respect due to a nobleman.⁴¹ In analysing the body language involved in the mutilation of public enemies, we need to make a clear distinction between the political actions of an angry crowd taking direct action against their oppressors and betrayers, and the more ludic behaviour of boys playing with the corpses of the infamous (according to Zorzi, it was the immunising innocence and purity attributed to boys that enabled them to handle decomposing corpses).

Greater or speedier punishment was desired in other ways too. The delay in hanging a thief, when the gallows was ready and the sentence had been read, greatly displeased everyone.⁴² For some sodomites in Bologna, when the penalty of death by burning was commuted to a whipping, female

³⁷ *Le croniche di Giovanni Sercambi*, ed. S. Bongi (3 vols., Lucca, 1892), vol. 1, p. 178; G. Cherubini, 'Vita trecentesca nelle novelle di Giovanni Sercambi', in Cherubini, *Signori, contadini, borghesi: ricerche sulla società italiana del basso Medioevo* (Florence, 1974), p. 28.

³⁸ Analysed in A. Zorzi, 'Rituali di violenza giovanile nelle società urbane del tardo Medioevo', in *Infanzie: funzioni di un gruppo liminale dal mondo classico all'Età moderna*, ed. O. Niccoli (Florence, 1993).

³⁹ *Diarium parmensis*, col. 275.

⁴⁰ *Cronaca modenese di Jacobino de' Bianchi*, ed. C. Borghi (Parma, 1861), pp. 5, 166.

⁴¹ Michele da Piazza, *Cronaca*, ed. A. Giuffrida (Palermo, 1980), pp. 52–3, 56–9.

⁴² 'Cronaca della città di Perugia', pp. 657–8 (1487).

spectators commented 'Their genitals should be cut off!'⁴³ When the female accomplice of a nocturnal burglar was recommended for pardon on All Saints' Day, the chronicler of Forlì declared 'It seems to me a great mistake that she was not hanged'.⁴⁴ In Bologna the elaborate execution of a man who robbed three German merchants – his flesh torn off with pincers, his body 'planted' in the ground, then hanged – elicited joyful relish from the chronicler: 'And this was one of the greatest executions done here for a long time, and it was well deserved, because you can't do too much torment to a street-robber.'⁴⁵ On the other hand, there could be great sympathy for some convicts. The affecting speech of a noble rebel to his two young sons reduced all the spectators to tears and provoked a great lament.⁴⁶ An armed guard was necessary at the execution of a man in 1389 because of the great affection for him: 'And there was much talk that he had always been much loved.'⁴⁷ Convicts from good families who received their deaths in a steadfast manner, commending their souls to God, preaching by their actions the virtues of obedience and devotion, gained the sympathy of the crowd. Peasants who refused to confess their sins, and who rejected spiritual comfort, who resisted the final act, incurred the hostility of spectators.⁴⁸

The narration of crime, and more especially of punishment, was an occasion for the statement of moral truths and for the perception of God's invisible hand. The Forlì chronicler, for example, frames his account of a revenge killing with an introductory sentence echoing a passage from Hosea, 'they have sown the wind and shall reap the whirlwind', and with a concluding proverb, which counters the pressure to take vengeance by warning of the moral and human costs of escalation.⁴⁹ When the boys of Milan shouted and threw stones at a disgraced Capitano di Giustizia, dismissed for taking a bribe, a chronicler saw this as divine judgement.⁵⁰ The Parma diarist traces satisfaction in the sudden deaths that overtook those who stole holy objects during factional disturbances in the city in

⁴³ *Cronica . . . civitatis Bononie edita a fratre Hyeronimo de Bursellis*, ed. A. Sorbelli, *Rerum italicarum scriptores*, 2nd series, vol. 23, pt 2 (Città di Castello, 1912–19), p. 93 (1456).

⁴⁴ Giovanni di Maestro Pedrino, *Cronica*, p. 306 (1431).

⁴⁵ *Corpus chronicorum bononiensium*, vol. 3, p. 389.

⁴⁶ *Una cronaca napoletana figurata del Quattrocento*, ed. R. Filangieri (Naples, 1956), p. 74.

⁴⁷ *Corpus chronicorum bononiensium*, vol. 3, p. 397.

⁴⁸ Dean, *Crime in Medieval Europe*, p. 127, based on chronicle reports for Ferrara in the 1490s.

⁴⁹ Giovanni di Maestro Pedrino, *Cronica*, vol. 1, p. 477. For the proverb: Dean, 'Marriage and mutilation', p. 18; J. W. Hassell, *Middle French Proverbs, Sentences and Proverbial Phrases* (Toronto, 1982), p. 137.

⁵⁰ *Diarium parmense*, col. 275.

1477.⁵¹ Disrespect for law and justice, on the other hand, was the work of the devil.⁵²

Acts of punishment as strongly didactic moments take many forms. An episode which occurred in Barletta in 1258 is narrated by Matteo Spinelli.⁵³ One of the chamberlains of the king of Naples was found in bed with a young unmarried girl, 'the most beautiful in Barletta'. He was arrested, and the girl's father and brothers took their complaint to the king. (Other fathers in the same situation would have had no hesitation in killing either the girl or the lover or both – see below, pp. 176–7 – but this fornicator was probably protected by his position as a royal servant.) The king's response was a simple one: he ordered his chamberlain to marry the girl. However, both the offending chamberlain and his kinsmen resisted this solution, offering to pay her a dowry instead. (To them, the fault should be open to compensation; a marriage that they had not arranged, with a girl who was evidently of lower class, smacked too much of punishment, depriving them of social capital.) But the king insisted, saying that he did not want the girl to lose the good fortune her beauty had won her. The chamberlain ended by consenting, just to get out of jail. In the reporting of this episode by Matteo Spinelli, the action is moralised several times over. First, the king told the reluctant bridegroom that he was a better knight now than before, and that all the children born of love became great men. Then the king's decision won a favourable reception among contemporaries: 'the king by this action was much loved, especially by women'. It is also reported to have had a real effect on the behaviour of other men: 'henceforth all the king's courtiers kept their breeches tightly tied'. And finally, the whole story is re-presented as a 'grande caso' by the chronicler, i.e. as an example of speedy, effective and appropriate justice (see below, pp. 79–80 for fictional re-workings of this theme).

Speed, efficacy and aptness also mark the tales of miraculous interventions by saints to punish sinners. These occur in several chronicles. The object of such saintly retribution is usually a gambler who has suffered heavy losses; he stands up or turns round, sees an image of a saint, commonly the Virgin Mary, and either blasphemes against her 'as if she were the cause of his losses, and not the devil', or attacks the image with a knife or stone.⁵⁴ Punishment is instantaneous: the blasphemer falls down paralysed,

⁵¹ Ibid., col. 255. ⁵² *Le croniche di Giovanni Sercambi*, vol.1, pp. 274–5.

⁵³ 'I diurnali di Matteo Spinelli di Giovinazzo (1247–1268)', in *Cronisti e scrittori sincroni napoletani*, ed. G. Del Re (2 vols., Naples, 1845–68), vol. 2, p. 640.

⁵⁴ *Corpus chronicorum bononiensium*, vol. 3, p. 62 (1355); *Cronache senesi*, pp. 747 (1392), 760 (1400), 762 (1404).

or loses speech and memory, or drops dead on the gambling table. One was struck, by St Antony, with St Antony's fire, 'and for three days he could do nothing but cry out, and he was completely burned by the fire, such that he seemed neither human nor beast'.⁵⁵ More perhaps in the fifteenth century, we also see the devil in action against blaspheming gamblers, for example 'disappearing' a man who called on him to 'Get me out of this mess' and who later appeared to his wife to tell her that he was in hell and that she could do nothing to help him.⁵⁶ When a 'great blasphemer' had an accident in drawing his sword, on Carnival Sunday, his self-wound and subsequent death was seen as a 'miracle' punishment.⁵⁷ Such narratives are exempla, religious cautionary tales, inserted into the fabric of the chronicle,⁵⁸ and certainly do not reflect the routine punishment of blasphemers by simple, low fines.

Chronicles also tell us what happened to the bodies of executed criminals. This lies outside the range of trial documents, which extend only from the criminal deed to the judicial sentence. Chronicles inhabit a broader narrative space than trial records. The image of criminals hanging in gibbets and of traitors' heads spiked on the city gates are powerful ones proposed as typical of medieval justice. One general history of criminal justice states without qualification that the hanged were left to rot, and the decapitated buried in ditches, not in consecrated ground.⁵⁹ However, this omits the development in Italy of dedicated confraternities, so-called 'companies of justice', who took on the tasks of comforting convicts before death and burying their bodies afterwards.⁶⁰ The first such confraternity was formed in Bologna in 1336 and the institution slowly spread to other Italian cities. It is often assumed that a contest over corpses and body-parts then ensued between the authorities, on the one side, wanting to display them for deterrent effect, and the 'companies of justice' and the convicts' families, on the other, seeking to ensure burial as part of the reconciliation of the condemned with Christ and with the community. In fact there seems to have been little opposition to the rapid burial of executed criminals. In the chronicles, gibbeting is not much referred to, and the spiking of traitors'

⁵⁵ *Cronache senesi*, p. 747. ⁵⁶ 'Traimi di tanti affanni': *Cronache senesi*, p. 787 (1416).

⁵⁷ *Diario di ser Tommaso di Silvestro*, in *Ephemerides urbevetanae*, ed. L. Fumi, *Rerum italicarum scriptores*, 2nd series, vol. 15, pt 5, vol. 2, pp. 7–8 (1483).

⁵⁸ For similar exempla: E. D. Craun, "Inordinata locutio": blasphemy in pastoral literature, 1200–1500', *Traditio*, 39 (1983), p. 158; C. Leveleux, *La parole interdite. Le blasphème dans la France médiévale (XIIIe–XVIe siècles): du péché au crime* (Paris, 2001), pp. 145–7.

⁵⁹ H. Zeremka, *Les bannis au Moyen Age* (Paris, 1996), pp. 183–4.

⁶⁰ A. Prosperi, 'Il sangue e l'anima: ricerche sulle compagnie di giustizia in Italia', *Quaderni storici*, 51 (1982); F. Fineschi, 'La rappresentazione della morte sul patibolo nella liturgia fiorentina della congregazione dei Neri', *Archivio storico italiano*, 150 (1992), pp. 806–7.

heads, or other body-parts, is also rarely mentioned. This is, of course, difficult to measure, because not all chronicles, and few consistently, report what happened to the convict's body after death. However, two sets of urban chronicles that do allow us to chart some developments here are those from Bologna and Siena. In Bologna, the parading of the heads of traitors or conspirators is occasionally reported in the fourteenth century: thus conspirators' heads were skewered on lances by mounted soldiers in 1350, and a traitor's head was carried around in 1363 (but note the chronicler's comment that 'greater torment was done to him than ever to anyone else').⁶¹ In this century, however, the infliction of additional pains on the body of the convict usually happened before death, not after, in the form of dragging, pincering or hanging by the feet en route to the scaffold. The practice of quartering the body and posting the quarters at visible sites seems to have been an innovation of the fifteenth century, and may be interpreted as part of the trend to execute fewer criminals, but to stage their deaths more spectacularly.⁶² In Bologna the first case comes in 1429, when two conspirators were dragged to the market-place and quartered, and the quarters placed on the gallows.⁶³ In 1440 the quarters of a conspirator's body were hung up at one of the city gates.⁶⁴ This practice was then extended from plotters to other criminals: in 1460 to a peasant who killed a citizen; in 1461 to a servant who killed his master and his master's wife, daughter and female servant; in 1491 to the killer of a public official.⁶⁵ To this list we might add the parricide who killed his mother and father in 1452, reported in another Bolognese chronicle.⁶⁶ The nature of these crimes is, of course, not insignificant. Quartering starts as a punishment for political treachery, and is then applied to other crimes that might be conceived of as resembling treason: those of children against parents, servants against masters, peasants against citizens, subjects against officials.⁶⁷

Is this pattern observable in Siena? Partly. The first quartering seems to have occurred in 1434, when a rebel was decapitated: his head was fixed on a lance, and his quarters were fixed to the gallows, where they remained until evening (not for very long).⁶⁸ In 1450 three men were quartered, though

⁶¹ *Corpus chronicorum bononiensium*, vol. 2, p. 600; vol. 3, p. 157.

⁶² A. Zorzi, 'Le esecuzioni delle condanne a morte a Firenze nel tardo medioevo tra repressione penale e cerimoniale pubblico', in *Simbolo e realtà della vita urbana nel tardo Medioevo*, ed. M. Miglio and G. Lombardi (Rome, 1993), pp. 171–2, 177–83.

⁶³ *Corpus chronicorum bononiensium*, vol. 4, pp. 13–15. ⁶⁴ *Ibid.*, vol. 4, p. 101.

⁶⁵ *Ibid.*, vol. 4, pp. 276–7, 287–9, 519.

⁶⁶ *Cronica civitatis Bononie edita a fratre Hyeronimo de Bursellis*, p. 90.

⁶⁷ So I was wrong to suggest an absence of analogy between treason in the state and treason in the household: see Dean, 'Domestic violence in late-medieval Bologna', p. 541.

⁶⁸ *Cronache senesi*, pp. 848–9.

the reason is not specified, while a fourth man, a Spanish servant who had betrayed his master for money, was dragged, hung by the feet, decapitated and his head fixed on a lance.⁶⁹ In 1479 men who tried to surrender Sienese castles to Florence were quartered.⁷⁰ So something of the same extension of the language of execution occurs at Siena as at Bologna: the display of body-parts is applied first to political traitors, then to domestic ones. Elsewhere, it is possible to find reports of quartering in the fourteenth century, but they are rare.⁷¹ An anonymous Florentine diarist records that the lord of Milan had a man quartered in 1388 for poisoning wells in an attempt on his life.⁷² Examples are much easier to find in the fifteenth century: at Foligno in 1421,⁷³ Cesena in 1452,⁷⁴ Naples in 1486 and 1498, Rome in 1432, 1436 and 1490.⁷⁵

Similarly, reference to bodies left on display is rare. In the extermination of the Canetoli family of Bologna, following their killing of Annibale Bentivoglio in 1445, Baldisera Canetoli was decapitated and the body left hanging by the feet in the street for two days.⁷⁶ In Rome in 1415, the body of an alleged conspirator, beheaded overnight, was thrown down before dawn at the bottom of the Campidoglio steps, and women came later to collect the body for burial.⁷⁷ In the same city, some seventy years later, the decapitated body of one of the powerful Colonna family was placed in a church until evening for everyone to see, and was then borne by friars and friends to another church for burial (more like a lying in state?).⁷⁸ In Florence in 1342 an alleged plotter was hanged with a chain so that he could not be cut down, and stayed on the gallows for three months; but this was punishment by the 'tyrannical' ruler of Florence, the duke of Athens.⁷⁹ Contrast what happened in Pisa in 1356: when a group of conspirators was beheaded on the piazza, an order was issued that no one was to touch the corpses for

⁶⁹ Ibid., p. 861. ⁷⁰ *Diarium senense Allegretti de Allegretis*, cols. 788, 789.

⁷¹ Ruggiero, *Violence in Early Renaissance Venice*, pp. 177–8.

⁷² 'Diario d'anonimo fiorentino dall'anno 1358 al 1389', ed. A. Cherardi, in *Cronache dei secoli XIII e XIV* (Florence, 1876), p. 478.

⁷³ *Le croniche di Giovanni Sercambi*, vol. 3, p. 273.

⁷⁴ Giovanni di Maestro Pedrino, *Cronica*, vol. 2, p. 268.

⁷⁵ *Una cronaca napoletana*, p. 64; *Cronica di Napoli di notar Giacomo*, ed. P. Garzilli (Naples, 1845), p. 222; *Diario della città di Roma di Stefano Infessura scribasenato*, ed. O. Tommasini (Rome, 1890), pp. 28, 36, 255–6.

⁷⁶ *Corpus chronicorum bononiensium*, vol. 4, pp. 160–1.

⁷⁷ *Il diario romano di Antonio di Pietro dello Schiavo*, ed. F. Isoldi, in *Rerum italicarum scriptores*, 2nd series, vol. 24, pt 5 (Città di Castello, 1917), p. 100.

⁷⁸ *Il diario della città di Roma di Antonio de Vascho*, p. 511. Compare Reggio 1372, when the body of a nobleman, executed for rebellion, was left hanging for a week, then buried in the cathedral with full military honours: *Chronicon regense*, in *Rerum italicarum scriptores*, ed. L. A. Muratori, vol. 18.

⁷⁹ *Cronache senesi*, p. 536.

three days, but representations were made to the authorities, and after just an hour the bodies were removed and buried.⁸⁰ Elsewhere we find reports of hanged criminals being buried, not left to rot: in Bologna in 1435 and 1454; in Forlì in 1425; and in Rome in 1409.⁸¹ In Ferrara in 1476, a servant who had killed a second-hand clothes dealer was found to be still talking when he was cut down – suggesting that cutting down occurred promptly – so he was beheaded instead;⁸² and in 1480 a law student, hanged for killing a Jew during Carnival, was buried in the Franciscan church, in the presence of fellow-students and university authorities.⁸³ Conversely, there would be no need for the authorities to order that bodies hanging on the gallows should not be touched – as in Bergamo in 1400 – unless the practice were the opposite.⁸⁴ Thus, though Baldus, writing in the second half of the fourteenth century, stated that hanging was a greater penalty than beheading because death was not instant, and because the body was not given for burial, this opinion was not in line with contemporary practice.⁸⁵

The argument of historical development in the treatment of gallows-corpses is, of course, open to criticism: it rests on a minority of cases, and it assumes that the perceived changes lay more in the actual practice of execution than in the sensitivity of observers (chroniclers became more aware of how the body of the condemned person was treated). These are strong objections, but they can be countered, though we have to step momentarily outside the chronicles to do so. Statutes ordering that the bodies of convicts – thieves in Venice and Siena, parricides at Lucca⁸⁶ – were not to be removed from the gallows mostly predate the emergence of ‘companies of justice’. On the whole, the chronicles reflect the change in piety that affected attitudes to the corpses of executed criminals. Piety increasingly focused on Christ’s redemptive suffering, and in so doing associated pain more firmly

⁸⁰ *Cronaca di Pisa di Ranieri Sardo*, ed. O. Banti (Rome, 1963), pp. 130–1.

⁸¹ *Corpus chronicorum bononiensium*, vol. 4, pp. 84, 195; Giovanni di Maestro Pedrino, *Cronica*, vol. 1, p. 125; *Il diario romano di Antonio di Pietro dello Schiavo*, p. 38.

⁸² Bernardino Zambotti, *Diario ferrarese dall'anno 1476 sino al 1504*, ed. G. Pardi, *Rerum italicarum scriptores*, 2nd series, vol. 24, pt 7 (Bologna, 1934–7), p. 8.

⁸³ *Ibid.*, pp. 72–3.

⁸⁴ *Chronicon bergomense guelfo-ghibellinum*, ed. C. Capasso, in *Rerum italicarum scriptores*, 2nd series, vol. 16, pt 2 (Bologna, 1926–), p. 101. See also an order of Ludovico Sforza that a hanged thief ‘sia sospeso donec da si casca’: M. G. Di Renzo Villata, ‘La vita del diritto nella Milano del tardo Quattrocento’, in *Milano nell'età di Ludovico il Moro* (Milan, 1983), p. 169.

⁸⁵ Baldus de Ubaldis, *Consilia* (Lyon, 1559), vol. 1, *consilium* 426.

⁸⁶ *Capitolare dei Signori di notte*, ed. F. Nani Mocenigo (Venice, 1877), p. 183 (1327); Dean, *Crime in Medieval Europe*, p. 126, with reference to Siena, c. 1300; *Statuta lucensis civitatis*, IV.61. The 1348 statutes of Alessandria directed that hangings were to be performed with iron chains, not ropes, and that no one was to remove the body without permission: *Codex statutorum magnifice communitatis atque dicaeisis Alexandrinae* (Alessandria, 1547), pp. 65–6.

with penitence and salvation.⁸⁷ The fact that Christ was crucified between two thieves, one penitent, one incorrigible, was a reminder that God was supposed to welcome any repentant sinner, a message that was conveyed in exempla in which brutal robbers were saved by their devotion to the Virgin Mary.⁸⁸ The presence of confraternal comforters on the scaffold spread a religious concept of punishment, in which the condemned made public confession of their sins in exchange for burial and possible salvation.⁸⁹ Confraternities were the vehicle by which convicts were allowed re-entry to the Christian community. Rapid burial after execution thus achieved a union of Roman-law and Christian principles. Ancient jurists declared that 'the bodies of executed persons are to be granted to any who seek them for burial'.⁹⁰ Just as Christ's body was granted burial, so Christocentric piety encouraged similar practice.

These changes in piety are evident in chroniclers' reports of unusual events during executions. Omission of confession, owing to haste or punitive zeal, was condemned by onlookers. A Sieneese 'executor of justice' who hanged three men on the spot, without letting them confess their sins, was censured by the citizens.⁹¹ However, this sympathy for convicts had limits: unlike in northern Europe, accidents in performing an execution, or untoward events during the process, were not perceived as signs of divine will in favour of the condemned man. In Perugia in 1488 the rope broke and the hanged man, still alive, fell to the ground; he was hanged a second time, but when the confraternity objected to this, it provoked a riot.⁹² The sentence was being read out against a young thief and killer in Ferrara in 1445 when there was an earthquake, causing everyone to flee; but this intervention was ascribed to an invocation of the devil by the convict, not to God's judgement that he be spared.⁹³ Despite some discussion of this problem by fourteenth-century jurists, the attitude evident in chronicles is hostile to these 'scaffold miracles'; by contrast, when saints save hanged

⁸⁷ Zorzi, 'Rituali di violenza giovanile', pp. 201–2; E. Cohen, 'Towards a history of European physical sensibility: pain in the later Middle Ages', *Science in Context*, 8 (1995), pp. 65–6; Cohen, *The Crossroads of Justice: Law and Culture in Late Medieval France* (Brill, 1993), pp. 181–98.

⁸⁸ Dean, *Crime in Medieval Europe*, pp. 151–3.

⁸⁹ F. Fineschi, 'La rappresentazione della morte sul patibolo nella liturgia fiorentina della congregazione dei Neri', *Archivio storico italiano*, 150 (1992), pp. 812–15.

⁹⁰ *Digest*, 48.24.1 and 48.24.3. The translation is that of A. Watson: *Digest of Justinian*, ed. and trans. T. Mommsen, P. Krueger and A. Watson (4 vols., Philadelphia, 1985). See also B. Fabbrini, 'La deposizione di Gesù nel sepolcro e il problema del divieto di sepoltura per i condannati', *Studia et Documenta Historiae et Iuris*, 61 (1995).

⁹¹ *Cronache senesi*, p. 766 (1410).

⁹² 'Cronaca della città di Perugia', p. 670. See also *Le croniche di Giovanni Sercambi*, vol. 1, p. 281–2; and 'Cronaca perugina inedita di Pietro Angelo di Giovanni', pp. 74–6.

⁹³ *Diario ferrarese*, p. 29.

men who invoke their names, hagiographers propound the ‘rule’ that ‘He whom God has freed is not to be hanged again’.⁹⁴ Accidents on the scaffold were thus subject to contested interpretation. Chronicles are a corrective to the tendentious shaping of events by hagiographers.

In contrast to the religious dimension, in which crime is the devil’s work and punishment is divine, chronicles provide a range of secular explanations for crime. These are important because trial documents are concerned only in the criminal event, not in its motivation or cause. If we take one of the Ferrarese chronicles from the later fifteenth century, a small group of reasons or motives for criminality are offered. Top of the list, for frequency, come killings or woundings by enemies (enmity violence).⁹⁵ Following these is a variety of hierarchical violence (ascending or descending): the violence of jealous husbands against adulterous wives, of peasants against officials, of farm labourers against citizens, of servants against masters.⁹⁶ The same diarist also hints at the influence on crime of social and natural phenomena such as unemployment and the weather. This typology is echoed in other chronicles.

REVENGE

This was the easiest way for chroniclers to connect episodes, or to suggest a narrative continuity. As the issue is dealt with more fully below (pp. 132–2), just a very few examples will be given here. The narration is sometimes brief, sometimes extensive. Examples of brevity include the account set early one morning in July 1470, when Lorenzo Benzetta of Cento entered the castle there and killed his enemy, Ser Cecco, because, we are told, Cecco had killed Lorenzo’s father twenty years previously.⁹⁷ In 1434, two brothers, wanting revenge for the death of their father many years previously, lay in wait for one of the killers and stabbed him to death.⁹⁸ For more extended revenge narrative, see below, p. 131.

SHORTAGES

In 1339 in Palermo the *popolo minuto* raided and plundered grain stores because of shortages, and later forcibly released those who had been

⁹⁴ R. Bartlett, *The Hanged Man: A Story of Miracle, Memory and Colonialism in the Middle Ages* (Princeton, 2004), pp. 46–51.

⁹⁵ *Diario ferrarese dall’anno 1476 sino al 1502 di autori incerti*, ed. G. Pardi, *Rerum italicarum scriptores*, 2nd series, vol. 24, pt 7 (Bologna, 1928–33), pp. 215, 219, 242, 245, 259.

⁹⁶ *Ibid.*, pp. 163, 244, 245, 265. ⁹⁷ *Corpus chronicorum bononiensium*, vol. 4, pp. 394–5.

⁹⁸ Giovanni di Maestro Pedrino, *Cronica*, vol. 1, p. 468.

imprisoned for this.⁹⁹ In Florence in 1353, the chronicler Stefani notes, there were food shortages and every day another shop was found to have been burgled overnight, though in this case those responsible were not the hungry and destitute, but youths of good families who could no longer meet their expenses in jousting and other *feste*.¹⁰⁰ In Rome in 1484, shortages and high prices caused by recent warfare led to the robbing of many mills and granaries, and to thefts and homicides.¹⁰¹ In Perugia in 1490 the imposition of new taxes in early September seems to be related to a rash of nocturnal burglaries later in the same month.¹⁰² It is tempting to relate the statement of one diarist in the summer of 1499, that ‘everyone in Ferrara is discontented, and the crafts have no work’, with his observation a few weeks earlier regarding frequent nocturnal burglaries, at which the traders complained that they could not remain in business as every night their shops were broken into.¹⁰³ The same diarist twice suggests a connection between harsh winter weather and more frequent theft and violence,¹⁰⁴ while another mentions in one breath discontent at taxation, shortage of money and the crimes of robbery, usury and homicide.¹⁰⁵ It was a shortage of work after the plague of 1478–9 that led an undertaker into theft; when eventually arrested and questioned, he also confessed to having sex with the corpses of beautiful young women before burying them.¹⁰⁶

PASSION

‘Honour-killings’ of women, for ‘shaming’ their husbands or fathers, are narrated throughout the period and at all levels of society. A man in Florence cut his sister’s throat because she had committed adultery.¹⁰⁷ A Florentine woman in Bologna – ‘the most beautiful woman in the city’ – was killed by her husband because he found her in bed with another man.¹⁰⁸ Rodolfo Gonzaga killed his wife Anna Malatesta for adultery with her dancing master.¹⁰⁹ The brutality of these honour-killings was sometimes staggering,

⁹⁹ *Bibliotheca scriptorum qui res in Sicilia gestas sub Aragonum imperio retulere*, ed. R. Gregorio (2 vols., Palermo, 1791–2), vol. 2, p. 257.

¹⁰⁰ *Cronaca fiorentina di Marchionne di Coppo Stefani*, p. 243.

¹⁰¹ *Il diario della città di Roma di Antonio de Vascho*, p. 505.

¹⁰² ‘Cronaca della città di Perugia’, pp. 736–7. ¹⁰³ *Diario ferrarese*, pp. 223, 228.

¹⁰⁴ T. Dean, ‘Ferrarese chroniclers and the Este state, 1490–1505’, in *Phaeton’s Children: The Este Court and its Culture in Early Modern Ferrara*, ed. D. Looney and D. Shemek (Tempe, 2005), p. 175.

¹⁰⁵ *Diario di Ugo Caleffini (1471–1494)*, ed. G. Pardi (2 vols, Ferrara, 1938), p. 282 (1490).

¹⁰⁶ *Le cronache bresciane inedite dei secoli XV–XIX*, ed. P. Guerrini, vol. 1 (Brescia, 1922), p. 29.

¹⁰⁷ ‘Diario d’anonimo fiorentino’, p. 445.

¹⁰⁸ *Corpus chronicorum bononiensium*, vol. 3, p. 528 (1409).

¹⁰⁹ Zambotti, *Diario ferrarese*, p. 131.

but is left without comment by chroniclers. In the Perugian countryside in 1445, Bracciamonte, the wife of Carlo Graziani, had her eyes plucked out by her lover, Mariano, a mere rope-maker, at the order of her brother, Leonello Oddi, when he caught them in bed together. Leonello gave Mariano a choice: 'Either I kill you, or you pluck out Bracciamonte's eyes.'¹¹⁰ A Ferrarese furrier, enamoured of his housekeeper, eloped with her after killing his wife.¹¹¹ The frequency of passion as a motive for homicide led to it being imputed where no other reason was known, as in a case in Forlì, when it was assumed that the murderer acted out of jealousy, even though his victim had never been seen talking to his wife.¹¹²

LACK OF JUSTICE

The Roman diarist Antonio de Vascho, having narrated in January 1484 the pursuit of those responsible for killing the Bargello of Rome, then in February the robbing of granaries and the thefts induced by grain shortage, and in March the torture and mutilation of a Spaniard, concludes that these things happen in Rome because of the lack of justice ('poca giustitia'), the many disputes ('brighe') and the presence of 'many wicked men'.¹¹³ The sentiment is shared and repeated by the Graziani diarist in Perugia: in May 1488, he commented that law had 'gone right down', and for some months life was bad in the city, but now it was going from bad to worse, with killers going about the city and staying in the noblemen's houses. In June he records that 'every day there is some assault and wounding or homicide', and that the cause is lack of justice.¹¹⁴

HIERARCHICAL VIOLENCE

The form of violence that most engages the attention of chroniclers is that of servants or slaves against their masters. The Bolognese chronicler, for example, traces in great detail the case of Francesco d'Alessandria in 1461, narrating first his crime, then his pursuit and capture, and finally his execution. Francesco had been the servant of a citizen for just five days when he killed his master, his master's wife, and his master's female servant, by

¹¹⁰ 'Cronaca della città di Perugia', p. 629. ¹¹¹ Zambotti, *Diario ferrarese*, pp. 193–4.

¹¹² Giovanni di Maestro Pedrino, *Cronica*, vol. 1, p. 141 (1425); and see Dean, 'Marriage and mutilation', p. 26.

¹¹³ *Il diario della città di Roma di Antonio de Vascho*, p. 506; likewise Infessura for the later 1480s: *Diario della città di Roma di Stefano Infessura*, pp. 237, 242–3.

¹¹⁴ 'Cronaca della città di Perugia', pp. 673–8.

luring each in turn to the stable and dispatching them with an axe. He then went into the house and started to rifle through the store-chests. When his master's five-year-old child began to cry, Francesco hit her repeatedly over the head with a piece of wood before fleeing on a horse with money, jewels and valuable clothing. Reaching a country inn in the pouring rain, he changed his clothes, and was protected by the innkeeper, who told the pursuing Bargello that no one had come that way on horseback; but when Francesco took to the woods, he was tracked down by a bounty-hunter and taken back to the city. There his execution took place within just two days. He was stripped and put on a cart and his flesh was pincered 'very cruelly'; he was paraded through the city to his master's house, where his right hand was amputated, and then to one of the city gates, where the other hand was cut off; and finally to the main piazza where he was first blinded and then quartered.¹¹⁵ Four features of this account are significant: the apparent motivelessness of the killing; theft as an accompanying crime; the extended cruelty of the punishment; and the application to servants of the body language of execution for treason. Motivelessness may be seen as an upper-class narrative device for denying humanity to the underclass.¹¹⁶ Cruel punishment was a deliberate message broadcast to the city's serving population: as a Florentine chronicler commented following the execution in 1379 of a female slave who had poisoned her master – first was her flesh torn off with pincers, and then she was burned to death – this was 'so that no female slave would dare poison her master'.¹¹⁷

These five explanations of crime fall into various types, which partly overlap with explanations of crime in modern historiography (see above, pp. 9–10): occasional lack, at a material or institutional level (of foodstuffs or justice); personal history (revenge of injury, adulterous women); and social tensions between servants and employers. The cases are, by their character, exceptional, but they show how official justice was expected to maintain public order, and even, through exemplary punishments, to intimidate servants in their relations with employers. On the other hand, no doubt was voiced as to the right of husbands to kill their adulterous wives.

Italian urban chronicles thus give access to social attitudes, both those of their authors and those of the actors in their texts (crowds, children, etc.). A comparative approach reveals some common features: hostility to certain

¹¹⁵ *Corpus chronicorum bononiensium*, vol. 4, pp. 287–9; cf. a similar case in Rome in 1444: *Diario della città di Roma di Stefano Infessura*, p. 43.

¹¹⁶ M.-T. de Medeiros, *Jacques et chroniqueurs* (Paris, 1979), pp. 30–2; *Images of Deviance*, ed. S. Cohen (Harmondsworth), p. 19.

¹¹⁷ 'Diario d'anonimo fiorentino', pp. 400, 525–6; Dean, *Crime in Medieval Europe*, p. 128.

types of justice; a sense of divine approval in popular retribution; justice as a didactic experience. At the same time, they also attest to changes in attitudes, for example the Christian piety affecting the reporting of executions. *Chronicles* provide three broad perspectives on crime and criminal justice. They suggest a range of historical explanations of crime, some of which are clearly patterned on earlier or fictional narratives; they attest to the religious dimension in punishment (from the divine judgement in crowd killings, and direct chastisement by God or saints, to redemptive attitudes to the inflicting of pain); and they express ambiguous attitudes to the forces of law (from the joy in cruelties visited on robbers to the exclamations at the excesses of bandit-catchers). Their narratives of justice seem to relate to a set of binary opposites – virility/effeminacy, speed/delay, publicity/secrecy, display/burial – in which the force of the former element in each case may be seen as both desirable and problematic. Alongside this is a strong element of the didactic: the principle of distinguishing between behaviour to be copied and behaviour to be shunned stands behind chroniclers' selection of crimes and punishments for narration. At the same time, chroniclers are sensitive to cruelty, to innovation, and to honour, as they were evident in either the crime itself or its punishment – a further indication of the ambivalence of responses to criminal justice in this period.

CHAPTER 3

Fiction

In an earlier publication, I committed the historian's typical sin against literature by considering fiction in the last chapter of a book on history, thus privileging documents over fiction, and adopting a hierarchical attitude to the discipline and its sources.¹ So, in amends, I am here placing literature close to the beginning of the inquiry, and not at the end. Literature's relation to the law is complex, and some of the methodology of proponents of 'Law and Literature' will be used to explore that relation in a period usually passed over by 'law and literature' specialists.² The emphasis will thus be not on how accurately fiction depicts the legal system, but on how it criticises the law (in Boccaccio, for example, the law-court is transformed into a place of laughter, where judges are mocked for their pomposity and scorned for their corrupt behaviour).

At first glance, the body of late medieval Italian prose fiction would seem to present none of the problems of other sources. Tales have known authors, whose lives we know in some detail. Individual tales or whole collections can be precisely placed and dated. The 'realistic' character of many tales, their renowned closeness to chronicle narrative, and their assertions of recounting true events might lead historians to treat them like other narrative sources. Moreover, the two genres, of history and story, were to some extent confused: some writers were both chroniclers and *novellieri*; *novellieri* used material from chronicles to achieve the effect of realism; and some chroniclers inserted tales into their 'histories'.³ Tales share with chronicles a precise placing of actions in space and time, and specific description of characters (providing what Cherubini called 'identity-card'

¹ Dean, *Crime in Medieval Europe*, ch. 7. The practice is criticised in Gravdal, *Ravishing Maidens*, p. 18.

² *Law and Literature*, ed. M. Freeman and A. D. E. Lewis (Oxford, 1999), p. xvi–xvii; R. Weisberg, *Poethics and other Strategies of Law and Literature* (New York, 1992), p. 35. For an exception, see Gravdal, *Ravishing Maidens*; and the comments of Mazzotta in *The World at Play in Boccaccio's Decameron* (Princeton, 1986), p. 213.

³ A. Varvaro, 'Tra cronaca e novella', in *La novella italiana* (Rome, 1989), pp. 155–6.

information – name, nationality, profession, age).⁴ Similar detail and precision are also found in chronicles. In their poems, collections of tales state methods and purposes that are similar to those of chroniclers: the didactic value of stories to influence contemporary behaviour; the recounting of things seen or certain by repute; reference to truth.⁵ Italian tales are thus a prime example of ‘borderline’ literature, inhabiting the indeterminate, historically shifting boundary between fiction and non-fiction.⁶ However, the complexity of literature as a source emerges on deeper inspection. Many of the tales are not ‘original’, but were recycled from earlier Italian authors or from northern European or Asian traditions. Boccaccio superimposed, fused and contaminated models and motifs from all existing narrative genres.⁷ Sercambi borrowed from Boccaccio; Sacchetti from *exempla* and French fabliaux.⁸ Just as much, therefore, as the absence of a named author or of a date, this aspect of Italian tales resists their historical contextualisation.

How should historians use literature? ‘The theory of literary reflection is dead’, declares one French scholar,⁹ though its practice continues to survive, no matter how often scholars insist that literature is not a mirror.¹⁰ Until recently, most historicising treatment of literature has tended to come from the pens of literary scholars, not those of historians.¹¹ The work of Lauro Martines on Italian Renaissance poetry and fiction, discussed below, is one grand exception. When historians use literature, mimesis remains one referential mode they adopt, using the concept of reflection to show how or how far such-and-such a passage or text ‘reflects’ social reality. Ballads about bandits, for example, are set against the historical record of outlaws and the common points are ticked off: ‘the poems . . . are realistic’, the

⁴ Cherubini, ‘Vita trecentesca nelle novelle di Giovanni Sercambi’, p. 7; M. Miglio, ‘La novella come fonte storica: cornacina e novella dal Compagni al Pecorone’, in *La novella italiana* (Rome, 1989), pp. 180–3.

⁵ *Ibid.*, p. 184.

⁶ P. Lamarque and S. H. Olsen, *Truth, Fiction and Literature: A Philosophical Perspective* (Oxford, 1994), p. 38.

⁷ A. Simon, *Le novelle e la storia: Toscana e Oriente fra Tre e Quattrocento* (Rome, 1999), p. 22.

⁸ G. Beretta, ‘Giovanni Sercambi e il Boccaccio’, *Bibliothèque d’Humanisme et de Renaissance*, 33 (1971), pp. 103–4; C. Bec, *Cultura e società a Firenze nell’età della Rinascenza* (Rome 1981), pp. 60–1; A. Corsaro, ‘Cultura e meccanismi narrativi del Trecentonovelle di Franco Sacchetti’, *Filologia e critica*, 6 (1981), pp. 24–5.

⁹ H. Martin, *Mentalités médiévales XIe–XVe siècle* (2nd edn, Paris, 1998), p. 298.

¹⁰ A. Sempoux, *La nouvelle* (Turnhout, 1973), p. 22 (quoting Croce); Simon, *Le novelle e la storia*, p. 24; I. Watt, ‘Literature and society’, in *The Arts in Society*, ed. R. N. Wilson (Englewood Cliffs, NJ, 1964), pp. 306–8.

¹¹ F. Duke and P. Stigant, ‘“ . . . When so much of it is invention”: history and literature’, *Literature and History*, 11 (1985), pp. 18–19.

author concludes.¹² But, as one literary scholar has written, 'Does it really matter if the facts of a literary work do or do not tally with reality? Surely the essence of a literary text lies elsewhere.'¹³ Yet if historians are not to look for reflections of the 'real' world in literature, then how are they to use it as a source?

In discussion of the relation of literature to history there is a widespread rejection both of formalist approaches, which deny the significance of context, and of simple content analysis, which ignores the literary character of the work.¹⁴ A focus on content can render literature either redundant (merely confirming what is available in documentary sources) or merely suggestive (providing what cannot be confirmed in other sources). The proposed alternative is a focus on precise historical tensions at the moment of composition, or on the relation between fiction and the ideology of given social groups.¹⁵ More broadly, fiction can be seen as a form of writing that comes to terms with contexts in different ways: the context of composition (the biographical, social and political context of the author, and the literary traditions and genres in which he was working); the context of reception ('how texts were read in different social groups and settings'); and the ideological context (does the fiction reinforce, criticise or transform an ideology?).¹⁶

Historians nevertheless do retain a belief in the informational value of literature as 'a mine' of information, providing what is missing from other sources. Martines, for instance, writes of fiction as being 'impregnated with the details of daily life'.¹⁷ As an example, he takes the history of food, noting that 'one can spend thirty years doing research in archives and never acquire any sense of when and how and what people ate' – information that is present in tales.¹⁸ Martines argues powerfully that this is not 'scrappy knowledge' or 'isolated titbits', but can 'bear upon the lineaments of class, business, gender and other human relations'. However, in the wrong hands,

¹² B. A. Hanawalt, 'Ballads and bandits: fourteenth century outlaws and the Robin Hood poems', in *Robin Hood: An Anthology of Scholarship and Criticism*, ed. S. Knight (Cambridge, 1999), p. 284 for the quotation.

¹³ I. Haywood, 'The making of history: historiography and literary forgery in the eighteenth century', *Literature and History*, 9 (1983).

¹⁴ J.-E. Ruiz-Domenec, 'Littérature et société médiévale: vision d'ensemble', *Moyen Age*, 88 (1982); D. LaCapra, *History and Criticism* (Ithaca and London, 1985), pp. 125–6; Lamarque and Olsen, *Truth, Fiction and Literature*, pp. 2–5, 107–8; Mazzotta, *The World at Play*, pp. 75–7.

¹⁵ Ruiz-Domenec, 'Littérature et société médiévale', pp. 93–4, 101.

¹⁶ LaCapra, *History and Criticism*, pp. 127–31.

¹⁷ L. Martines, 'Séduction, espace familial et autorité dans la Renaissance italienne', *Annales* 53 (1998), p. 256.

¹⁸ L. Martines, 'The Italian Renaissance tale as history', in *Language and Images of Renaissance Italy*, ed. A. Brown (Oxford, 1995), p. 314.

this approach can reduce the utility of literature to narrow specialisms, while also discounting the fictionality of the tale, neutralising its literary character.¹⁹ Simon has included this problem – historical interpretation that takes account of the literary nature of the text – as one of four problems in reading fictional tales historically (the others being the role of realism, the weight of narrative tradition, and the relation between fiction and reality).²⁰

One argument might be this: the essence of the problem lies in seeing other sources as constructing a ‘real world’ against which literature is to be tested: where it agrees with them, it can be validated as a source. However, if the real world does not reside in other sources, but if they merely construct versions or interpretations of the real, perhaps using fictions to do so, then literature does not have to be tested against them and can stand as just another interpretation of the real. This, however, disconnects literature, and every other source, from reality. More profitable is to retain a hold on referentiality, but to treat literature not as a reflection or a storehouse of details on social customs but as a social imaginary, offering material for phenomena otherwise difficult to approach, namely changes in values and desires, in collective sensibility. As Martines wrote elsewhere, the characterisations in Italian Renaissance fiction ‘hover close to vital concerns of fifteenth-century readers’,²¹ while the ‘departures from reality have a great deal to tell us about the construction of alternate imaginary realities, and therefore about problems in the real world’.²² Lamarque and Olsen have argued that there are many ways that fiction can be referential, and that fiction can be ‘about’ either real or fictional objects, or about some theme.²³ The approach adopted in this chapter attempts to combine some of these methods of analysis, while declining to use the informational content of tales, and putting aside the contexts of composition and reception. The questions I want to ask of literature are these: what are the main ways in which law and judicial processes are represented? How do they relate to the literary, legal and ideological contexts?

It has been said that ‘European literature of the Middle Ages . . . bears the imprint of a marked preoccupation with law. Trial scenes are a staple of much European literature, and certainly that of the Middle Ages.’²⁴

¹⁹ P. Salwa, ‘Fiction e realtà: novella come fonte storica’, *I Tatti Studies*, 1 (1985), p. 190.

²⁰ Simon, *Le nouvelles e la storia*, p. 11.

²¹ *An Italian Sextet: Six Tales in Historical Context* (New York, 1994), p. 57.

²² Martines, ‘Italian Renaissance tale as history’, pp. 314, 329–30.

²³ Lamarque and Olsen, *Truth, Fiction and Literature*, pp. 4–5, 107–124.

²⁴ Gravdal, *Ravishing Maidens*, p. 16.

Tales that contain judges or trials as main narrative elements focus on three themes: the judge as a butt of mockery; the trial process as an occasion for injustice, not justice; and the relative roles of revenge, restitution and punishment. This is a significant cluster of themes.

JUDGES

Some judges are mocked simply for their character or physical condition. The lord of Salerno sends as judges of that city men who are 'animals' more suited to controlling sheep: one is greedy, with penile dysfunction, and married to a young girl just out of a monastery.²⁵ The 'Captain' of San Miniato is gouty and moribund; one of the judges in Florence is ridiculed for hiding under a bed during a riot.²⁶ In *Decameron* VIII.5, three Florentine pranksters pull down the breeches of a poor, ill-clad, ignorant judge. Self-importance in judges is ridiculed in stories by Bracciolini, Sacchetti and Boccaccio: the pomposities of ceremonial entry to the city and of inaugural speeches are the occasions for tricks to be played on Podestà who are cuckolded (*Decameron*, III.5), insulted with urine, mocked (Sacchetti, 42, 43), and heckled.²⁷

TORTURE, BRIBERY AND SEXUAL PREDATION

The readiness of judges to inflict pain through torture is a common element in fictional trial narratives. Sercambi's *novelle* have numerous occasions when criminals are tortured on suspicion alone: the fact that two beggars are able to spend eight months living at an inn and always settle their accounts promptly leads to their torture and confession to murder and robbery (no. 87); the sound of a man crying in his bedroom, heard from the street by the Podestà's officials, is sufficient reason to question and torture him for killing his brother (no. 89); and the absence of a client's valuables in the ruins of a country inn, suspiciously burned to the ground, is sufficient reason to torture the innkeeper, who confesses to theft (no. 90). In each of these cases the acuity and speed of the judge's hunches reveals the true perpetrator. In Boccaccio, torture is used narratively in the opposite way, to generate confessions to false accusations (as in *Decameron*, III.7, IV.3 and IV.10). In other cases, torture is used for comic purposes: on

²⁵ Masuccio Salernitano, *Novellino*, ed. S. S. Nigro (Milan, 1990), no. 13.

²⁶ Franco Sacchetti, *Il Trecentonovelle*, in *Opere*, ed. A. Borlenghi (Milan, 1957), nos. 158, 159.

²⁷ Poggio Bracciolini, *Facezie*, ed. M. Ciccuto (Milan, 1983), no. 9.

allegations of anal sex between husband and wife, occasioning a shrewd response from the accused;²⁸ and on those alleged to be farting in court (Sacchetti, 145).

As noted by Clements and Gibaldi, the image of the lustful judge had a long literary-historical tradition, stretching back to the story of Virginia in Livy's history of Rome.²⁹ In *Decameron*, IV.10, a maidservant saves Ruggieri from hanging when the judge takes a fancy to her and is persuaded by her that Ruggieri is innocent. Women using their sexuality to rescue a relative from certain judicial death is a common plot device, found also for example in *Decameron*, IV.3. Openly didactic writers, such as Sercambi, make judges pay for their sexual predation: a judge who rapes a female complainant is later struck by lightning (no. 7). By contrast, the theme of bribery is rather thinly represented, though Poggio Bracciolini does tell, in one of his *Facezie* (no. 37) of rulers who invent accusations of treason against rich subjects in order to extort money from them.³⁰

THE NATURE OF THE CRIMINAL TRIAL

Sercambi tells the following tale about the trial of a peasant, Landra.³¹ A Lucchese citizen travelled into the countryside to collect his rents. Having collected 90 florins, he put them in a bag and loaded the bag on his horse; but on the return journey to Lucca, the bag fell off without his noticing. A peasant woman, taking a snack to her husband in the fields, found the bag and took it to him. When the citizen reached the city, he discovered his loss and, accompanied by the city police, retraced his route asking if anyone had found a bag containing 100 florins. Landra said his wife had found a bag. The citizen claimed this as his, counted out the money and, on finding only 90 florins, accused Landra of stealing the other ten. 'Either you pay me back those florins or I'll have you hanged.' Despite Landra's protestations, the citizen had Landra taken to the local magistrate, who decided that he should be transferred to the city for trial. En route, three further misfortunes happened to Landra. On coming upon a man trying to pull his mule out of the mud, he tried to help by pulling the animal's tail, but this came away in his hand, and the owner insisted on coming

²⁸ *Motti e facezie del piovano Arlotto*, ed. G. Folena (Milan and Naples, 1995), no. 77.

²⁹ Clements and Gibaldi, *Anatomy of the Novella*, pp. 154–5. ³⁰ Cf. *ibid.*, pp. 153–4.

³¹ Giovanni Sercambi, *Novelle*, ed. G. Sinicropi (Bari, 1972), no. 112. Sacchetti has another version of this tale, in which the protagonist of each of the four episodes is a different person; he also presents the episodes as occurring in Florence in the mid-thirteenth century. See *Il Trecentonovelle*, no. 196.

to court to prosecute Landra for his loss. Then, not looking where he was going, Landra collided with a horse bearing a pregnant woman: the horse threw her off and she miscarried. The husband joined the group of those claiming redress against Landra. At the next bridge, Landra, who was by now desperate, decided to throw himself in the river, either to escape or to drown; but in his fall he hit a man fishing in a boat under the bridge, killing him. Fished out of the river, Landra found the dead man's brother adding homicide to the charges. When Landra was brought before the Podestà, he admitted the facts, but denied culpability: he would never have admitted having the bag if he had stolen from it; he should not be punished for trying to do good to the mule-owner; the husband also bore some responsibility for the miscarriage, by failing to provide his wife with an equable mount; and if he had known that a man was fishing under the bridge, he would have called out before jumping. Against everyone's expectations, the court decided that Landra should not die, but instead awarded him the bag (as the citizen's bag contained 100 florins, on his own assertion, this bag was obviously not his) and offered the following compensation, should the victims accept it: Landra could keep the mule until he could re-attach the tail to it and then return it to its owner; Landra could likewise keep the woman until he made her pregnant again; and, if the dead man's brother insisted on punishment, then Landra was to be put in a boat under the bridge, and the brother dropped from the bridge, to see if he could kill him. None of the claimants accepted these offers.

There is little that 'reflects' reality in this tale, which reads more like a series of legal 'hypotheticals' of the kind discussed in medieval law-school. Obviously, the character and setting are given some local touches, and the initial scheme of the citizen aiming to extract money from the peasant could be seen as expressing the exploitative relation between city and countryside.³² However, the main plot – the sequence of 'crimes' committed by Landra, his defence statement and the judge's sentence – bears no relation, save one of comic inversion, to fourteenth-century judicial practice.³³ A peasant found in possession of a 'stolen' bag was more likely to be tortured than given an indulgent hearing. The figure of a judge rewarding Landra for his offences – a bag full of coins, a mule, a woman to be made pregnant – rather than extracting fines and imposing public hanging runs counter to the common representation of judges as thieves and extortioners. Yet the tale does comically enact two issues in contemporary judicial practice. One

³² On this theme: Martines, 'Italian Renaissance tale as history', pp. 324–5.

³³ Cf. the interpretative technique of 'imaginary compensation' for absences recommended by Martin in *Mentalités médiévales*, p. 300.

is the appropriateness of restitution, rather than retribution, for a range of crimes; the other is the relevance of intention to the assessment of an offender's culpability. Forms of compensatory justice – re-attaching a tail to a mule, returning a woman pregnant to her husband, re-enacting the killing with the offender in the position of the victim – are presented as risible by Sercambi. Similarly, the discourse of subjective intention – Landra did not intend to steal, damage, cause miscarriage or kill – is subjected to satire by the inappropriateness of its application.

We should note, however, that in strongly didactic episodes such as this, fiction is almost indistinguishable from chronicle. For the theme of the courtier who rapes a girl, and is then forced to marry her, is one that appears in thirteenth-century chronicle (above, p. 61) and late fourteenth and fifteenth-century literature. A south Italian chronicle recounts the episode as an example of the king's great justice. Sercambi places the tale in Milan at the time of Bernabò Visconti (*Novelle*, 6), Sabadino degli Arienti in the court of King Charles V in Paris (*Le Porettane*, 28), and Masuccio Salernitano in the entourage of the king of Sicily while he was at Valladolid in Aragon (*Novellino*, 47). In all these stories, there are four unchanging elements: the woman is raped by a knight; her parent complains to the king; the king summons the knight into his presence, and, having extracted his confession, orders him to marry the girl there and then; having ensured the girl's material welfare through a dowry, the king has the knight seized and executed. Within this narrative structure, each author introduces particular elements. Sabadino's version casts as the victim the daughter of a Bolognese medic at the king's court; Sercambi's victim is the daughter of a wetnurse who frequented the household of Bernabò's wife; Masuccio doubles the victims, making them the two daughters of an Aragonese knight. In Sercambi, the driving force of the narrative is the mother's rejection of monetary compensation for her daughter: she demands justice. In Masuccio, the driving force is the king's anger at the misconduct of his knights. Sercambi, perhaps following numerous anecdotes concerning Bernabò Visconti's verbal sharpness, inserts an exchange between him and the knight: 'How could you be so bold as to rape virgins under my lordship?' – 'Bestial desire impelled me' – 'Bestial punishment, then.' Masuccio characteristically traces the steps of the rapists into the girls' bedroom: their bribing of a maidservant, their use of a rope-ladder, their completion of the rape before the girls are fully awake. All three tales also inscribe responses to the ruler's resolution of the offence. In Sercambi, the author comments: 'Thus Messer Bernabò performed supreme justice [*somma giustizia*]'. This accords with the chronicle account of Matteo Spinelli, and with the version of Masuccio

Salernitano, which ends with Masuccio's direct-speech comments on the role of law in ensuring balanced government, free from both passion and hatred. In Sabadino, however, the punitive action is criticised. The king shows the still-bleeding body of the headless knight to the girl's father, who complains that the king has been too cruel: the sight of blood evokes a perception of cruelty.³⁴ In response, the king insists that he has performed justice and restored the girl's honour by extinguishing the bad name she has incurred through the rape. The king's action has progressively restored her honour: 'Four days ago your daughter was a whore, then she became a wife, now she is a widow.'

This prompts many comments: first, the exaggeration of the offence and the punishment, compared to a chronicle account of a similar episode (above, p. 61).³⁵ The crime is rape, not just fornication, and the punishment is death, not just marriage. It is impossible for the historian not to relate these two features to contextual developments in law. After the middle of the fourteenth century, the trend in statute law was to penalise rape with death; yet those same statutes often allowed the rapist to escape death if he married or endowed his victim (below, p. 139). This tension in law between punitive and reparative justice is then explored in literature: capital punishment is seen both as supremely just and as excessively cruel. The second contextual development is the strengthening of parents' legal powers over their children's marriages. Note how the girls in these stories tend to be voiceless objects: in Masuccio, they are not even conscious when the rape happens; in Sabadino, the girl is labelled as a prostitute, even though she was forced; in Sercambi, it is the plaintive mother who takes the rapist to court, where the girl is allowed to speak only in unison with her mother. In all the tales, the protagonists are the parents, who demand justice for the sexual penetration of their daughters. Sercambi emphasises this aspect by suggesting that the girl rather enjoyed her abduction: 'Cateruzza, who had now tasted the sweetness of a man, said "Mother, keep quiet . . ."' We should connect this stress on parental action with the contemporary laws penalising daughters who married without parental consent. The law often figured daughters' lovers as 'rapists', and elopements as 'rapes'. This displacement, arising from anxieties regarding daughters' sexual activity, is then enacted in literature: the girl's lover becomes

³⁴ E. Benzoni, 'La crudeltà nelle novelle italiane del '500: qualche spunto', *Atti dell'Istituto veneto di scienze, lettere ed arti*, 152 (1993–4), p. 114.

³⁵ Cf. the analysis by P. Strohm, *Hochon's Arrow: The Social Imagination of Fourteenth-century Texts* (Princeton, 1992), ch. 6.

a rapist, to be punished by death; the girl's subjectivity is completely eliminated.

Then, we might note the character of the 'trial' of the knight. No judges, notaries or due process are involved: the ruler dispenses justice directly and immediately by confrontation between accuser and accused. In Sabadino, the king accepts the truth of the father's allegation and does not test it. 'Send your daughter to marry tomorrow, without delay', he tells the father. The king commands the parents and the parents command their daughter. In Sercambi's tale, Bernabò Visconti acts at first as a mediator, not a judge. When the knight claims to have recompensed the girl, Bernabò addresses the mother: 'You hear what he says, that he has well recompensed her?' – 'It's not true.' Only later, following his 'interrogation' of the knight, does Bernabò turn punitive. In Masuccio, the king, having heard the father's allegation, almost kills his miscreant knights on the spot, in anger; he refrains long enough to announce the knights' fault and to order them to marry the girls. This immediacy of justice, while perhaps alluding to an 'old-world' ideal of accessibility and informality of royal justice, had an obvious dramatic function in stripping the action back to its essentials in the confrontation between power and sexual misdemeanour. In doing so, the tales reveal the political ideology of punitive justice, while sharing with chroniclers a desire for speedy process.

Beyond this, these three tales also conform to a pattern in other medieval fictions, in which rape is represented in such a way as to efface the violence suffered by the women.³⁶ At one level, the sexual violence is validated as a male escapade or as a legitimate male response to female rejection. At another, the rape is represented not as suffered by women but as recognised by men. However, these tales, while effacing the violence through happy ending, passive heroine and ellipsis of the sex act, do challenge the way that compensatory practice effaced the violence. And in doing so they contribute to the establishment of hierarchies noted as a role of sexual violence in fiction – hierarchies of virility (military prowess), class (social hierarchy) and supremacy (political hegemony). In this case, violence against women is used to reinforce ideals of behaviour appropriate to knights and courtiers, and to display the punitive power of the prince.

Judges are criticised and ridiculed in tales for their physical and moral deformities, but the ideal of rapid justice and of punishment is strongly affirmed (though contested by Sabadino). Settlement by compensation

³⁶ A. Roberts, 'Violence against women and the habits of thought', in *Violence against Women in Medieval Texts*, ed. A. Roberts (Gainesville, 1998), esp. pp. 5–6 and 10, for the phrasing that follows.

and restitution is presented as inadequate. This, however, conflicts with the multi-formed presence of revenge in fiction. Arlotto takes revenge on the mice who gnawed his linen, by getting one of them to eat all the others (no. 166); on a charlatan who stole the audience for his sermon, by having a church bell rung to dispel his crowd of customers (nos. 57–8); on those who locked him out of his house at dinner-time, by staining their clothes with holy oil (no. 195); and on the buffoon who pissed on him, by returning the piss, and adding shit and a beating (no. 80). In a parody of the convention of love poetry by which a lover declares himself ‘killed’ by a girl’s eyes, Sacchetti tells of a man who ate goats’ eyes so as to take revenge on such a girl (no. 107). He also has tales of a loser at dice who kills a dice-maker in revenge (no. 122) and of a crab that takes revenge for being caught by biting the labia of the fisherman’s wife (no. 208). In Sabadino’s *Le Porettane*, ladies duped by a country priest take revenge by reporting him to the bishop (no. 47), while the revenge of lawyers is declared to be more ‘decent’, because non-violent, than the revenge of knights (no. 60). Among the *Facezie* of Poggio Bracciolini are tales in which a servant throws a stone at his master’s horse, to avenge a kick (no. 162); Pier della Vigna urges on his master Frederick II a policy that earns him God’s wrath, in revenge for being blinded (no. 131); and the Genoese judge in Pera shaves the backside of some Genoese involved in a murderous fight with some Greeks, in revenge for the Emperor of Constantinople’s punishment of Greeks for a similar offence by shaving off their beards (no. 205). Literary revenge can thus be violent or non-violent, can be taken for damage to property, function, feelings and trust, as well as for physical injury, and can be a response to judicial action. Honour rarely seems to be at stake here; what motivates revenge is a desire to inflict equivalent damage. Revenge is punitive. It punishes those who act inappropriately by invading or disrupting another’s space or function or property: gnawing sheets, stealing an audience, making the other go hungry, dirtying clothes, ‘killing’ in love, causing gambling losses, capturing from the sea, unmotivated kicking and improper judicial punishment.

Fiction thus shares the ambivalence of chronicle towards justice and revenge. The means that justice employs – torture and cruelty – are disapproved of, while revenge is treated as a daily occurrence. On the other hand, the severe punishment of offences (especially sexual crimes) is praised: in this respect, the courtroom in the Italian tale does function, as Mazzotta stated, as an arena for the ratification of moral and social values.³⁷ In

³⁷ Mazzotta, *The World at Play*, pp. 214, 229.

connecting legal and social history, fictional tales are useful because of the frequency of trial scenes and their imaginative re-working of the functioning of justice. Tales can be 'about' various aspects of the criminal law, or 'about' the appropriateness of retribution or compensation. Comparative treatment of a similar narrative in chronicle and fiction can then suggest how tales relate to changes in the law that seem to reflect anxieties regarding parental control of daughters' sexuality.

Statute law

The quantity of surviving legislative material from late medieval Italy is astounding and unmanageable. In the eighteenth century, Muratori spoke of it as a forest covering the whole of Italy.¹ Estimates of the number of volumes of statutes run to thousands. For many cities, there are two or more printed editions: one redaction printed in the late fifteenth century, and an earlier redaction edited by nineteenth- or twentieth-century scholars. Verona, Ferrara, Modena and Lucca are typical examples: fifteenth-century redactions of their statutes were printed in 1475, 1476, 1487 and 1490, respectively; and earlier versions (1288, 1308, 1327) in the late nineteenth or twentieth centuries. But between those redactions, other versions of the statutes either survive, unpublished, in the archives (as in Lucca), or do not survive at all (as in Ferrara). Bologna has seven unpublished redactions of its statutes from years between 1355 and 1454.² The process by which a redaction is chosen for publication has been criticised as highly arbitrary and anarchic: the later twentieth century saw an unco-ordinated flood of new editions, some of which led to the publication of minor texts while major texts were left languishing in the archives.³ Moreover, the statutes, as Andrea Zorzi has recently pointed out, represent only one part of the 'normative fabric', for alongside them was the ongoing legislation of decrees and ordinances (*bandi, decreta, provvigioni, riformaggioni*).⁴ These were, in

¹ G. Fasoli, 'Edizione e studio degli statuti: problemi ed esigenze', in *Fonti medioevali e problematica storiografica* (Rome, 1976), p. 173.

² Ibid., p. 184; *Gli statuti del Comune di Bologna degli anni 1352, 1357, 1376, 1389 (Libri I–III)*, ed. V. Braidi (2 vols., Bologna, 2002).

³ M. Ascheri, 'La pubblicazione degli statuti: un'ipotesi di intervento', *Nuova rivista storica*, 69 (1985), p. 101; V. Piergiovanni, 'Statuti e riformaggioni', in *Civiltà comunale: libro, scrittura, documento* (Genoa, 1989), p. 94; I. Lazzarini, 'Il diritto urbano in una signoria cittadina: gli statuti mantovani dai Bonacolsi ai Gonzaga (1313–1404)', in *Statuti città territori in Italia e Germania tra Medioevo ed età moderna*, ed. G. Chittolini and D. Willoweit (Bologna, 1991), pp. 398–9.

⁴ A. Zorzi, 'Le fonti normative a Firenze nel tardo medioevo: un bilancio delle edizioni e degli studi', *Statuto del Capitano del Popolo degli anni 1322–1325*, in *Statuti della repubblica fiorentina*, ed. G. Pinto, F. Salvestrini and A. Zorzi (Florence, 1999), pp. lxxviii–lxxxiv.

Philip Jones's phrase, 'incessant and innumerable'.⁵ Just within the field of criminal law, the decrees issued by the Malatesta lords of Cesena, for example, frequently modified the penalties for breaking the curfew or carrying prohibited weapons, reiterated the prohibitions on gambling, restrained officials' use of summary penalties, cancelled trials and bans, and appealed for information on current cases of theft and homicide.⁶ The decrees of the Visconti dukes of Milan covered denunciations, penalties, appeals, prisons, banditry, sodomy and torture, as well as, repeatedly, prostitution, arms-carrying, gambling and blasphemy.⁷ When Francesco Sforza, the new ruler of Milan in the 1450s, set about revising the large quantity of accumulated decrees, his officials soon abandoned this work because of the sheer scale of the task.⁸ The law created through decrees remained fragmentary, contingent, unco-ordinated.⁹ Establishing what 'the law' was at any one time on a specific issue is therefore a difficult task: the question is open to multiple responses.

Two features of statute law make it difficult to use as a historical source. The first of these is its multi-layered quality. Italian historians talk of statutes as formed by sedimentation, by a constant process of revision and addition. Sometimes the presence of different layers is obvious, as when a law begins grammatically in the third person ('The Podestà will do this . . .'), and then switches into the first person ('I [the Podestà] will . . .'), a form characteristic of an earlier period of law-writing.¹⁰ Other layers are more difficult to detect, as with additions and qualifications appended to clauses ('save for . . .', 'this statute does not apply to . . .'), or with the integration of decrees into statute law, fusing texts in ways now impossible to separate or to date.¹¹ The second feature is the dialogic quality of the law. Statute law was compiled in a critical relation to the *ius commune* of Roman law and its interpreters. Ignorance of this dimension can lead to misunderstandings (see below, p. 97). Learned lawyers condemned the crudeness of statute law and the ignorance of its compilers,¹² while law-makers often tried to anticipate and curtail lawyerly discussion of the meaning of statute.

⁵ P. J. Jones, *The Malatesta of Rimini and the Papal State* (Cambridge, 1974), p. 304.

⁶ *Bandi cesenati (1431–1473)*, ed. C. Riva (Bologna, 1993).

⁷ *I registri dell'ufficio degli statuti di Milano*.

⁸ M. G. Di Renzo Villata, 'Scienza giuridica e legislazione nell'età sforzesca', in *Gli Sforza a Milano e in Lombardia e i loro rapporti con gli stati italiani ed europei (1450–1535)* (Milan, 1982), p. 116.

⁹ Di Renzo Villata, 'La vita del diritto nella Milano del tardo Quattrocento', p. 147.

¹⁰ One example: *Statuti di Verona del 1327*, ed. S. A. Bianchi and R. Granuzzo (Rome, 1992), p. 457.

¹¹ Piergiorganni, 'Statuti e riformagioni', p. 90; G. S. Pene, 'Vicende della legislazione statutaria in Ivrea', *Bollettino storico-bibliografico subalpino*, 62 (1964), pp. 324–5.

¹² Piergiorganni, 'Statuti e riformagioni', p. 89.

Homicide law is often adduced as the chief instance of crudeness: statutes imposed a blanket penalty of death for homicide, without considering the obvious exceptions (self-defence, unpremeditated and accidental killing). The opposite trend is found in anticipatory definitions by legislators of terms and of the scope of application of laws: lists of prohibited weapons, for example, were always very precise, and in Padua images of the weapons were even painted outside the law-court, to cut short any dispute or uncertainty.¹³ Key terms determining the level of penalty were often defined (see below, p. 00). More explicitly, legislators sometimes spelled out that their deviation from the *ius commune* was deliberate. The 1308 Lucchese statutes, for example, insisted that the contumacious may be convicted, 'notwithstanding that, according to the *ius commune*, the absent cannot be convicted'.¹⁴ The 1331 statutes of Bergamo asserted that there were to be no limits on inquisitions, despite custom or the *ius commune*.¹⁵

As a historical source, law thus poses many problems. It lacks a single, identifiable author. It is difficult to date. A single text may incorporate fragments written at different times. Its provisions are partly answers to questions not yet posed. Some of these problems were considered by Léopold Genicot in his volume for the series 'Typologie des sources du Moyen Age occidental',¹⁶ in particular the problems of authorship and originality. Instead of an author, Genicot proposes a three-stage process by which law is made – the decision to legislate, the drafting and the promulgation – and stresses that each stage could take different forms according to political and communicative structures. Regarding the supposed originality of law, Genicot points to the many ways that law could borrow from and transpose texts from neighbouring jurisdictions, or concepts and terms from learned law or doctrinal treatises.

Setting aside for the moment the development of the law on specific crimes (for which see below, pp. 138–9, 141–2, 157–8, 171–2, 182), the focus here will be on the image of criminal justice as presented in statute law. Two approaches are adopted: one, from discourse analysis, examines the internal structure and self-authorisation of legal texts ('intradiscourse');¹⁷ the other, from 'Law and Literature', examines the fictive or literary aspects

¹³ *Statuta patavina*, fol. 125 (1281).

¹⁴ *Statutum lucani comunis an. 1308* (1867, repr. Lucca, 1991), p. 132. See also Dezza, 'Gli statuti di Tortona', pp. 368–9. The Roman-law 'rule' derives from a rescript of Emperor Trajan, in *Digest*, 48.19.5.

¹⁵ *Lo statuto di Bergamo del 1331*, ed. C. Storti Storchi (Milan, 1986), pp. 486–7; H. U. Kantorowicz, *Albertus Gandinus und das Strafrecht der Scholastik* (2 vols., Berlin, 1907–26), vol. 2, p. 39.

¹⁶ L. Genicot, *La loi* (Turnhout, 1977).

¹⁷ P. Goodrich, *Legal Discourse: Studies in Linguistics, Rhetoric and Legal Analysis* (Basingstoke, 1987), pp. 146–8, 177–82.

of law. Using some of the techniques of discourse analysis – the lexical and syntactical forms of the authoritativeness that mark legal language, that is, its reference to traditional sources of authority, its use of distancing, generalisation and axiomatic and imperative verbs – allows an analysis of the rationales provided for criminal law. Using some of the methods of ‘Law and Literature’ allows the role of fiction to be exposed in the translation of law into judicial practice.

‘Lest crimes go unpunished’ (*ne crimina remaneant impunita*) was the great mobilising rationale of much medieval criminal law. Sometimes it is in the very first clause, the first element of rationale, of the criminal statutes.¹⁸ Though at Perugia and Rome this tag was used to support the accusatory system of trial, in general it was used to justify inquisition (thus at Padua, Parma, Cesena) and its associated methods such as torture (Rome) and the conviction of the contumacious (Piacenza).¹⁹ It is found doing duty as a motive for the removal of due-process safeguards, as in allowing summary justice (Ravenna, Modena) or proof by *fama* alone (Forlì and Cesena, for nocturnal crimes).²⁰ And it gives grounds for action to strike down defence strategies such as the concealment of the truth by witnesses (Padua, Florence) or the use of ‘crafty proofs’ suggesting that the victims of homicide were responsible for their own deaths (Milan).²¹ As a rationale, it was deployed to justify getting at what was hidden: hidden by witnesses who did not tell the whole truth; hidden by darkness, which precluded eye-witness testimony; or hidden by suspects who absconded or refused to confess. It thus connects to other rationales that present crime as something concealed that needs to be brought into the light: ‘in order that malefactors be not hidden’ local inhabitants are to pursue them; ‘in order that crimes be better found out’ local denouncers are to be appointed; as illegal acts are often committed under the cloak of legality, no one is to join any noblemen in conflict.²²

Supporting this general impulse to increase punishment of crime were three clusters of arguments: one based in the causes of criminality, for which

¹⁸ *Statuti di Perugia dell'anno MCCCXLII*, ed. Degli Azzi, vol. 2, p. 14; *Statuta lucensis civitatis*, IV.1; *Statuto del Capitano del Popolo degli anni 1322–1325*, p. 127.

¹⁹ *Statuti di Perugia dell'anno MCCCXLII*, vol. 2, p. 14; *Statuti della città di Roma*, ed. C. Re (Rome, 1880), pp. 83, 126; *Statuta patavina*, fol. 91; *Statuta communis Parmae ab anno MCCLXVI ad annum circiter MCCCIV*, ed. A. Ronchini (Parma, 1857), p. 221; *Statuta floride et alme civitatis Cesene*, clause 2; *Statuta varia civitatis Placentiae*, ed. G. Bonora (Parma, 1860), p. 374.

²⁰ *Statuti del comune di Ravenna*, ed. A. Tarlazzi (Ravenna, 1886), p. 169; *Statuta Mutine* 1487, fol. 205; *Statuta Cesene*, clause 15; *Statuto di Forlì dell'anno MCCCXLII*, ed. Rinaldi, pp. 210–11.

²¹ *Statuta patavina*, fol. 107v (1420); *Statuto del Podestà dell'anno 1325*, p. 169; *Antiqua ducum Mediolani decreta* (Milan, 1644), p. 108 (1386).

²² *Statuta patavina*, fol. 123; *Statuta communis Parmae ab anno MCCLXVI ad annum circiter MCCCIV*, p. 223; *Capitula regni Siciliae*, ed. Testa, p. 104 (1332).

remedy was to be provided; a second alleging 'experience' as teaching the need for changes in the law; and a third stressing the greater restraints that were needed to control crime. One final argument, used by monarchies and principalities but not by republics, announced the ruler's personal detestation of crime as a sufficient justification for new criminal law.²³

The primary and most extensive of these supporting arguments related to the causes of crime. These can be divided into three: the pathological, the cultural and the criminological.

1. *Pathology*. Laws are said to be needed to avoid pollution and contagion allegedly spread by certain varieties of malefactor: prostitutes in Ravenna, sodomites in Florence, sorcerers in Savoy.²⁴ This attitude shares something of the protective legislation issued against contact with other polluters such as Jews (see below, p. 149). Malicious accusations are characterised as a disease needing remedy in Milan, as is, in Cesena, the ease with which men leap from angry words to bloody blows.²⁵ The utility of separating the diseased from the healthy justifies the expulsion of pimps, sodomites and false-dice players.²⁶ In the laws of Lucca, Cesena and Piacenza the rationale of 'purging a province of bad men' was used to justify proceeding *ex officio*, expelling the infamous, and ensuring the capture of all malefactors.²⁷
2. *Culture*. Bad, corrupt customs are denounced, such as the 'empty pagan ceremonies' performed at weddings in Fabriano, or the readiness of citizens to defend suspects in court in Modena.²⁸
3. *Criminology*. Some offences are mentioned as especially criminogenic: most frequently, gambling, the *fons et origo* of all evils according to the Luccchese statutes, which leads players into both poverty and criminality.²⁹ Similarly adultery is said to give rise to homicide,³⁰ and the presence of prostitutes to 'rude acts, behaviour and sins, offensive to God and detrimental to the honour of the city'.³¹

However, what legislators feared would generate more and greater wrongdoing was above all any failure to punish. They were constantly fearful of giving incentives to crime, of providing *materiam* or *incentivum*

²³ *Antiqua ducum Mediolani decreta*, pp. 194, 206, 213; *Capitula regni Siciliae*, ed. Testa, p. 14.

²⁴ *Statuti del comune di Ravenna*, p. 176; *Statuto del Podestà dell'anno 1325*, p. 200; *Decreta Sabaudie ducalia* (Turin, 1477), fol. 3.

²⁵ *Antiqua ducum Mediolani decreta*, p. 265; *Statuta Cesene*, clause 31. ²⁶ *Ibid.*, clause 72.

²⁷ *Ibid.*, clause 2; *Statuta lucensis civitatis*, IV.204; *Statuta varia civitatis Placentiae*, p. 364.

²⁸ *Lo statuto comunale di Fabriano* (1415), ed. Avarucci and Paoli, p. 172; *Statuta Mutine* 1487, fol. 212v (1479).

²⁹ *Statuta lucensis civitatis*, IV.185. ³⁰ *Statuta Cesene*, clause 44.

³¹ *Statuto del Podestà dell'anno 1325*, p. 244.

delinquendi, in their words. The two features of the judicial system that were blamed in this respect were the ease of obtaining pardon and the slightness of penalties. ‘Villainous and violent men pay no regard to such penalties’, declared the marquis of Monferrato in 1473, ‘and do not abstain from disgraceful conduct’; only punishment according to the law could transform them ‘from reprobates into peaceful and virtuous men’.³² Failure to punish strengthened the ill-will of criminals, ‘like an enemy within’.³³ In Milan, Galeazzo Visconti tackled another means of evading full punishment – reduction of penalty when the offender made peace with the victim – and deprecated the way that this made men ‘ready to commit crimes’.³⁴ His successor, Giangaleazzo, declared that ease of obtaining pardon acted as a slippery slope to crime.³⁵ The king of Naples, asserting that ‘impunity gives incentive to criminality’, and that it was in the public interest, not just that of private individuals, that crimes should not go unpunished, condemned the way accusers abandoned their prosecutions because of either intimidation or bribery.³⁶ His predecessor in 1330 forbade the composition of serious crimes because it ‘enlarged a noxious cause of criminality’.³⁷

Allied to these theories on the way that penalty and pardon interacted with crime was a characterisation of criminals in terms of rashness or boldness: *audacia* and *temeritas* were the qualities that legislation time and again aimed to ‘restrain’ or ‘repress’. Criminals of all sorts were thought to possess these qualities, from killers and thieves to those who broke peace-treaties, married in secret or spoke ill of their lord.³⁸

The second cluster of arguments assumes that experience and observation show the need for harsher law. ‘Experience teaches’ that what is provided as a remedy or granted as a concession can turn to harm: lawyers’ objections, allowed as a safeguard for the defendant, drag trials out; the prohibition of *ex officio* trials at the request of local communities impedes justice.³⁹ This argument makes obvious reference to the ‘Ciceronian topos of *historia magistra vitae*, of “history teaching lessons”’.⁴⁰ Legislators also show that

³² *Decretorum Montisferrati antiquorum et novorum . . . collectio*, ed. I. H. Saletta (1675), p. 35.

³³ *Statuta Cesene*, clause 2. ³⁴ *Antiqua ducum Mediolani decreta*, p. 41.

³⁵ *Ibid.*, p. 195: ‘ne facilitate veniae proclivior sit decursus ad crimina’.

³⁶ *Pragmaticae regni novae et antiquae* (Naples, 1551), p. 38 (1462).

³⁷ *Capitula regni Siciliae* (Naples, 1551), p. 59.

³⁸ *Statuti della città di Roma*; *Statuta Cesene*, clause 35; *Statuta lucensis civitatis*, IV.102; *Statuta varia civitatis Placentiae*, p. 173; *Antiqua ducum Mediolani decreta*, p. 85.

³⁹ *Capitula, statuta et ordinamenta [civitatis Ast]* (1534), p. 97 (1480); *Pragmaticae regni novae et antiquae*, p. 38 (1462).

⁴⁰ R. Wodak, ‘The discourse-historical approach’, in *Methods of Critical Discourse Analysis*, ed. R. Wodak and M. Meyer (London, 2001), p. 76.

they have learned that human laws need to vary according to the times,⁴¹ that new remedies are needed to ensure punishment,⁴² and that certain crimes have multiplied in recent years (for example, abduction of women in Venetian territory).⁴³

Finally, the deterrent effect of penalties was universally believed in. Fear of punishment was thought to reduce the homicide rate, restrain the infliction of wounds to the face, keep bandits away from the city, and curtail sin at night.⁴⁴ More value was placed on fear than on love: the argument that fear of punishment, rather than love of justice, draws most men back from crime was used to justify a doubling of some penalties for violence, while those whom neither fear of God nor love of virtue could draw back from evil were at least restrained by fear of punishment.⁴⁵

These separate rationales were often used in combination, strung together in litanies. Thus, a decree of the lord of Milan in 1393, ordering precise sequences of cruel torments in the execution of forgers, highway robbers, murderers, poisoners and rebels, drew on the full repertoire: *experience teaches* that unless crimes are repressed with suitable punishment when they first appear they become stronger every day, fixing deeper roots that are more difficult to remove; so, *having heard* of many forgeries, homicides, robberies, poisonings and other detestable crimes being committed in his territories, Giangaleazzo Visconti has resolved, *before this contagion is passed to many others*, to provide remedies, so that the *punishment of some might create fear in many and lest crimes go unpunished*.⁴⁶

Any one of these elements could perhaps be taken as key to the others, but the medical metaphor seems especially important, partly because it accords with the way that judges thought about their work: they saw themselves as cleaners and weeders, removing dirt from the social fabric and digging out pernicious tares from the garden of state.⁴⁷ Cleansing, weeding, healing all shared a restorative function. Just as physicians working in the Hippocratic–Galenic tradition saw disease as the outcome of humoural imbalance combined with environmental factors, so too legislators sought to restore and maintain a social balance by removing or confining contaminants and by reducing insolence through increased dosages of fear. The restorative nature of these rationales connects to another feature: their non-vindictive nature. Crimes are to be punished, of course, but above all they

⁴¹ *Statuta Mutine* 1487, fol. 198v (1456); *Capitula regni Siciliae* (Naples, 1551), pp. 46, 53, 55. For a sermon of Robert of Naples emphasising the mutability of law, see Kelly, *The New Solomon*, p. 180.

⁴² *Ibid.* ⁴³ *Statuta patavina*, fol. 120v (1414).

⁴⁴ *Statuta di Perugia dell'anno MCCCXLII*, pp. 29, 31, 216; *Statuta varia civitatis Placentiae*, p. 401.

⁴⁵ *Statuta Cesene*, clause 24; *Statuta lucensis civitatis*, IV.19.

⁴⁶ *Antiqua ducum Mediolani decreta*, pp. 185–6. ⁴⁷ Chambers and Dean, *Clean Hands*, pp. 40–1.

are to be prevented and criminals are to be deterred. Statute law was thus forward-looking, and aimed at changing behaviour in the future; it was not backward-looking, concerned only with the retribution or avenging of past deeds. As Pertile put it, the original vindictive root of punishment had long been overlaid by Roman-law ideas of deterrence and the public good (suggesting the exemplarity and publicity of punishment) and by Christian notions of improving the criminal.⁴⁸

The axiomatic nature of many of these pronouncements relates to their authoritative sources: Roman law and canon law. The creation of rules and values from these sources was a technique of legal argumentation, convincing the audience of the credibility and goodness of the proposed measures, and generating assent.⁴⁹ The combination of public interest in punishing crime and concern about spreading infection was formulated by canon lawyers for use against heretics in the later twelfth century.⁵⁰ The principle that failure to punish creates 'audacity of impunity through which those who were bad become worse' was formulated by Pope Innocent III.⁵¹ The figure of the governor cleansing his province of malefactors comes from Roman law.⁵² So too does the key principle that crimes should not go unpunished. This occurs in discussion of the *lex Aquilia*, which dealt with damage to property, including slaves.⁵³ There was a case in which a slave was fatally wounded twice, first by one person, then by a second. Though it was not clear which was the mortal wound, it was argued that both assailants should be liable. And in order to fend off allegations of 'absurdity' in this conclusion, the jurist Julian uses this argument: 'cum neque impunita maleficia esse oporteat'. Late medieval jurists, on the other hand, did find this conclusion absurd, and decided similar cases in the opposite way (see below, p. 100). But the principle had long been liberated from its context, and now served to assist in the construction of penal severities.

A second approach to statute law comes from the sub-discipline known as Law and Literature.⁵⁴ This approach alerts us to the elements of law within fiction, and the elements of fiction within law. The latter are relevant here. Though one medieval jurist declared that fiction had no place in statute law, and that the words of statutes were to be understood 'naturally',

⁴⁸ Pertile, *Storia del diritto italiano*, vol. 5, pp. 53–7.

⁴⁹ M. Sbriccoli, *L'interpretazione dello statuto: contributo allo studio della funzione dei giuristi nell'età comunale* (Milan, 1969), pp. 243–51.

⁵⁰ R. M. Fraher, 'Preventing crime in the High Middle Ages: the medieval lawyers' search for deterrence', in *Popes, Teachers and Canon Law in the Middle Ages*, ed. J. Ross Sweeney and S. Chodorow (Ithaca and London, 1989), p. 219.

⁵¹ *Ibid.*, pp. 220–2. ⁵² Kantorowicz, *Albertus Gandinus*, vol. 2, p. 4; *Digest*, I.18.13.

⁵³ *Digest*, 9.2.51.

⁵⁴ For overview: *Law and Literature*, ed. Freeman and Lewis; I. Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge, 1995).

as they were commonly understood,⁵⁵ fiction pervaded the law of Italian statutes. This is not fiction in the sense of the construction of an invented world of adventure or romance, but fiction as an expedient simplification of events, as 'a conscious falsehood introduced for a particular purpose'.⁵⁶ In law, this sort of 'fiction of convenience' involved pretending that one thing had happened when it had not. The primary legal fiction was that of contumacy treated as confession. As the fourteenth-century statutes of Ravenna state, for example, if the defendant does not appear in court, he is to be assumed to have confessed ('pro confesso habeatur'), 'as if he made an oral confession'.⁵⁷ This is the form of fiction that the jurists most focus on, the one that causes them most concern: according to the *ius commune*, an absentee can only be fined, never condemned to corporal or capital penalty;⁵⁸ in the *ius commune*, bandits are always allowed to come to court to enter their defence, though this is disallowed by statutes;⁵⁹ and the law cannot turn an unreal confession into a real one.⁶⁰ In statute law, on the other hand, capital penalties can be imposed *in absentia*, bandits are denied a hearing, and contumacy is equated with confession. Moreover, fictive confession is only the most conspicuous sign of a much broader presence of fiction at all stages of the legal process, from discovery and arrest to implementation of sentence. The fiction that an offence had been committed, even though there was only presumption, was often applied to gamblers and other 'low life' encountered by the Podestà's staff on their regular patrols. When they go out searching for weapons, anyone found with the sheath of a knife or sword, is to be fined *as if* he had a knife or sword.⁶¹ When they go out searching for gamblers, and find someone standing over or sitting by a gaming table, 'as gamblers usually do', or saying words such as 'azar', 'punctum' or 'partia', or if dice are found on him or on the ground, he is to be punished *as if* he had been found playing dice.⁶² In Perugia, anyone who flees from the Podestà's staff while they are searching for weapons is to be punished *as if* he had been found with armour and a knife.⁶³ Anyone, especially a person of ill repute, who is found in a house,

⁵⁵ Baldus, *Consilia*, vol. 1, consilium 294.

⁵⁶ Lamarque and Olsen, *Truth, Fiction and Literature*, pp. 15–16, 186–8, with reference to Vaihinger's 'as if' concept of fiction.

⁵⁷ *Statuti del comune di Ravenna*, p. 156.

⁵⁸ Zordan, *Il diritto e la procedura criminale nel Tractatus del maleficiis di Angelo Gambigioni*, pp. 41–2; Kantorowicz, *Albertus Gandinus*, vol. 2, p. 226, quoting the Digest: 'absens ad mortem damnari non potest'.

⁵⁹ *Consilia questiones et tractatus Bartoli cum additionibus novis* (Venice, 1495), consilium 107.

⁶⁰ *Ibid.*, consilium 116. ⁶¹ *Statuta patavina*, fol. 128 (1286).

⁶² *Codex statutorum magnifice communitatis atque dicaesis Alexandrinae*, p. 99.

⁶³ *Statuti di Perugia dell'anno MCCCXLII*, p. 150.

courtyard, stable or garden, especially at night, without the consent of the householder, may with impunity be seized, bound and delivered to the Podestà, who is to proceed *as if* against a thief, or one intending to commit a terrible crime.⁶⁴ This same 'as if' was also deployed in setting the punishment for assassins and their hirers: in Padua, all assassins were to be treated *as if* banned 'for proven homicide', even if not convicted,⁶⁵ while in Lucca those who arranged, without promising payment, for someone to be wounded, were to be condemned *as if* they had inflicted the injury.⁶⁶

In procedure, fiction was used to pretend that some things had happened when they had not, or had not happened when they had. Thus, in the event of 'hidden crimes' committed at night, such as robbery, arson and homicide, proof may be by *fama* alone, and this is to be held as legitimate proof, *as if* there were real proof.⁶⁷ During a trial, the cognizance of crimes is not to be impeded by certain types of objection: the judge is to proceed *as if* such objections had not been made.⁶⁸ At the end of the trial, there is to be no appeal from criminal sentences: sentences are to be implemented *as if* no appeal had been made.⁶⁹ Fiction was also used more broadly to substitute one offence for another, one status for another, one place of crime for another.⁷⁰ In cases of robbery and rapine in Modena, if the defendant does not appear, he is to be punished *as if* guilty of homicide.⁷¹ Similarly, in the same city, foreign scholars, in Modena to study, are to be treated *as if* they were citizens.⁷² In Asti, if a citizen hits a foreigner, the penalty is to be that for hitting an inhabitant.⁷³ If a robbery or theft is committed outside a city's territory, and the stolen goods are brought into that territory, then the robber or thief can be punished *as if* the crime had been committed within the city's jurisdiction.⁷⁴ When homicide or robbery is committed outside inhabited places, then the inhabitants of the place to which the culprit first flees are bound to pursue and capture him, *as if* the crime were done within its boundaries.⁷⁵ Those who wound or kill citizens outside the city's territory may be prosecuted *as if* the crime had been committed within the city's borders.⁷⁶

⁶⁴ *Statuta patavina*, fol. 129 (1372). ⁶⁵ *Ibid.*, fol. 110 (1288).

⁶⁶ *Statutum lucani comunis an. 1308*, p. 146. ⁶⁷ *Statuta Cesene*, clause 15.

⁶⁸ *Ibid.*, clause 8. ⁶⁹ *Antiqua ducum Mediolani decreta*, p. 128 (1387).

⁷⁰ This latter kind of transformation is also found in Gandino's treatise on crimes: Kantorowicz, *Albertus Gandinus*, vol. 2, pp. 229–30, 254.

⁷¹ *Statuta civitatis Mutine anno 1327 reformata*, p. 392. ⁷² *Ibid.*, p. 470.

⁷³ *Capitula, statuta et ordinamenta [civitatis Asti]*, fol. 36v.

⁷⁴ *Lo statuto di Bergamo del 1331*, p. 168; *Statuto di Arezzo (1327)*, p. 213.

⁷⁵ *Lo statuto di Bergamo del 1331*, p. 170.

⁷⁶ *Statuto di Forlì dell'anno MCCCCLIX*, p. 267; *Statuto di Como del 1335. Volumen magnum*, ed. G. Manganelli (Como, 1936), p. 151.

The image of criminal justice given by the rhetoric of the statutes is thus strongly marked by strain: the law strains to contain and counter a threatening wave of pollution or contamination. Crime is likened to disease or dirt. The only remedy is the fear instilled by severe punishment. Consequently, it is recognised – or supposed – that levels of crime are affected by more lenient or merciful judicial practices and by social tolerance (concealment). At the same time, much criminal activity can be successfully prosecuted and punished only if the scope of the law is fictively enlarged.

This chapter connects to the main themes of this book in three ways. First, it shows the difficulty of connecting law to precise social contexts, because of the problem of identifying the authors and dates of much statute law. Secondly, however, it suggests that a comparative study of the discursive strategies of statute law can reveal significant features of a largely common repertoire, used by republics and principalities alike, in which crime was characterised in a particular way, requiring and justifying special methods to control it, and in which punishment was seen as non-vindictive, ameliorative and preventative.

Consilia

In the later Middle Ages, academic lawyers produced thousands of ‘learned opinions’ (*consilia*) on legal cases currently before judges. These opinions might be requested by the judge himself, by another official, or by one of the parties involved. The practice of seeking learned counsel was apparently impelled partly by pressures on the judge (as someone inexperienced in local law, he needed advice; as an employee subject to end-of-term appraisal, he needed to be able to defend his decisions) and partly by pressures on the parties (by ensuring a well-grounded outcome, *consilia* reduced costs and speeded up trials).¹ The practice started to become frequent from the middle of the thirteenth century, and then accelerated in the fourteenth, with collections of *consilia* also starting to circulate.² The most prolific consultant, Baldus de Ubaldis of Perugia (d. 1400), produced over 2,000 *consilia*.³

Legal historians often extol the value of *consilia* as a source: one speaks of them having ‘remarkable potential’,⁴ another of their ‘immeasurable value’.⁵ A third writes of their ‘extraordinary capacity to represent an infinite variety of situations originating in everyday life’.⁶ The jurist, it has been said, worked with his hands on the law and his eyes on society,⁷ and therein lies his value to historians. Yet the potential is rarely realised, least of all in

¹ P. R. Pazzaglini and C. A. Hawkes, *Consilia: A Bibliography of Holdings in the Library of Congress and Certain Other Collections in the United States* (Washington, 1990), xv; J. Kirshner, ‘*Consilia* as authority in late medieval Italy: the case of Florence’, in *Legal Consulting in the Civil Law Tradition*, ed. M. Ascheri, I. Baumgärtner and J. Kirshner (Berkeley, 1999), pp. 111–16.

² M. Bellomo, *Società e istituzioni in Italia fra Medioevo ed età moderna* (Catania, 1977), pp. 354–9.

³ K. Pennington, ‘The consilia of Baldus de Ubaldis’, *Tijdschrift voor Rechtsgeschiedenis*, 56 (1988), pp. 85–9.

⁴ J. A. Pluss, ‘Baldus of Perugia on female and male: the case of Alumella’, *Thought*, 64 (1989), p. 222.

⁵ T. Kuehn, *Illegitimacy in Renaissance Florence* (Ann Arbor, 2002), p. 218, and generally pp. 217–21.

⁶ M. Lucchesi, *Si quis occidit occidetur: L'omicidio doloso nelle fonti consiliari (secoli XIV–XVI)* (Pavia, 1999), p. xv.

⁷ Sbriccoli, *L'interpretazione dello statuto*, p. 7.

the field of criminal justice. There are many reasons for this, some relating to the nature of the *consilia* themselves, some to how legal historians use them. As physical objects – ink on paper – *consilia* are often hard to handle and read. There are few modern editions, and the scholar has mostly to consult collections made and printed in the fifteenth or sixteenth centuries, some of them in difficult fonts (e.g. those of Bartolomeo Cepolla, nearly 350 pages in nine-point). Moreover, as texts they present their own set of problems. They use a system of citation that is ‘perplexing’ and ‘abbreviated beyond conventional understanding’.⁸ They cite Roman laws and *consilia* by other lawyers in ways that dissolve their integrity as authored texts: it can be difficult for the modern reader to know where text ends and quotation begins.⁹ They provided parties and judges with arguments for and against the application of specific laws or specific penalties, but as the real outcome of the cases is rarely recorded, the *consilia* remain no more than ‘arsenals of possibilities’.¹⁰ Individual *consilia* are often not dated, and the persons involved are sometimes anonymised. They thus resist historical contextualisation. Then, from a social historian’s point of view, the use made of them by legal historians often fails to arouse much interest. Historians, already ‘baffled and repelled’ by the ‘ponderous’ and ‘tortuous’ language of the law, are further estranged by the ‘self-contained discourse of legal historians’: expecting to find ‘an account of the interdependency of legal rules with institutions in their historical, economic and social setting’, historians find instead ‘a meticulous description of doctrinal agreements and altercations’ among jurists, ‘a special type of intellectual history’.¹¹ Legal historians look more to theory than to social practice, and more to the law as taught than to the law as practised in the courts.¹² And if the historian looks for help from more usual guides to historical sources, she finds that they too fail. The useful French series of manuals on historical sources, the *Typologie des sources*, has not tackled legal *consilia* in its thirty-five-year history, nor are they treated in Cammarosano’s survey of sources for medieval Italian history.¹³

⁸ Pazzaglini and Hawkes, *Consilia*, xiii; Pluss, ‘Baldus of Perugia on female and male’, p. 223.

⁹ Ibid.

¹⁰ M. Ascheri, ‘La decisione nelle corti giudiziarie italiane del Tre–Quattrocento e il caso della Mercanzia di Siena’, in *Judicial Records, Law Reports and the Growth of Case Law*, ed. J. H. Baker (Berlin, 1989), pp. 104–5.

¹¹ J. Kirshner, ‘Some problems in the interpretation of legal texts in the Italian city-states’, *Archiv für Begriffsgeschichte*, 19 (1975), pp. 23–4.

¹² M. Ascheri, ‘Le fonti e la flessibilità del diritto comune: il paradosso del *consilium sapientis*’, in *Legal Consulting in the Civil Law Tradition*, p. 19. And see the comments of J. B. Baron, ‘Interdisciplinary legal scholarship as guilty pleasure: the case of law and literature’, in *Law and Literature*, p. 33.

¹³ P. Cammarosano, *Italia medievale: struttura e geografia delle fonti scritte* (Rome, 1991). To be fair, the *Typologie des sources* has covered the allied, academic genre of the legal *quaestio*, in vol. 44–5 (1985).

Yet the value of knowledge of Roman law and its reception is undoubted. Take the example of Ruggiero's study of the Venetian judicial response to a case of accidental killing.¹⁴ Venetian practice, he says, stressed the absence of rational calculation in such cases, and one such killer was acquitted in 1354 because, as the Doge and his Councillors stated, 'will and rational calculation distinguish crime'. Ruggiero sees this statement as an expression of 'the reasoned world of a merchant banker', of a 'counting-house' mentality. But in fact the expression comes straight from Roman law, and was frequently used by learned lawyers. Awareness of this therefore overturns the thrust of Ruggiero's argument: intent on demonstrating the pragmatism of Venetian justice, and the irrelevance to it of Roman law, Ruggiero misreads a legal quotation as a piece of mercantile reasoning; the quotation proves instead how much Venetian justice, despite the appearances, owed to Roman law.¹⁵

The aim of this chapter is to survey those *consilia* that dealt with criminal cases and to examine the state of criminal justice through their eyes. This proceeding might offend some legal historians. The singularity of *consilia* as a source has been contested by Bellomo: it rests, he says, on a supposed distinction between academic and daily-life discussions of law. Bellomo insists that jurists addressed legal problems in the same way, whether teaching pupils in law-school or defending clients in court. *Consilia* as a genre can thus not be cut off from educational works, nor legal theory from court-room practice.¹⁶ Nevertheless, the social historian will want to resist this absorption of *consilia* into the broader history of jurisprudence, for the very reason that *consilia* were triggered by real-life problems, and offer us a certain entrée into the worlds of both law-courts and legal learning. For this purpose, I have read the collected *consilia* of fifteen consultants, spread in date from the early fourteenth century to the late fifteenth. These consultants range from obscure figures such as Fredericus de Petrucii (*fl.* 1321–43) to Alessandro Tartagni (1424–77), whose elegant yet incisive opinions, produced at the rate of forty or fifty a year for twenty-five years, earned him wealth and reputation.¹⁷ The crimes on which they advised included homicide, wounding, theft, arson, adultery, fornication and insult; and they also covered procedural and jurisdictional problems such as territoriality,

¹⁴ Ruggiero, 'Excusable murder', pp. 114–15.

¹⁵ T. Kuehn makes the same point, in general form, in his review of Ruggiero's *Boundaries of Eros*, in *Speculum*, 62 (1987), p. 184. For this misunderstanding of Venetian law, see also M. Fusaro, 'Politics of justice/politics of trade: English merchants in the records of Venice's *Giudici del Forestier*', forthcoming.

¹⁶ M. Bellomo, *I fatti e il diritto: tra le certezze e i dubbi dei giuristi medievali (secoli XIII–XIV)* (Rome 2000), pp. 466–8, 654.

¹⁷ B. Pieri, 'Ricerche sui *consilia* di Alessandro Tartagni', *Studi parmensi*, 44 (1999).

proof, the use of torture and criminal responsibility. *Consilia* on criminal cases are usually a small proportion of the total output of these jurists: only in Bartolomeo Cepolla's case do they form a majority in the printed edition (sixty-one out of eighty). Put together, the criminal *consilia* from these fifteen jurists amount to under 350, out of a total of some 5,000. And just as the bulk of their work fell into the areas of inheritance and property law, so too most of the scholarship on *consilia* has followed this preponderance. Surveying this output is unlikely to reveal a 'map of criminality', as one scholar hoped;¹⁸ but it can reveal, first, the most frequent problems that required learned advice in the application of the criminal law, and secondly, the arguments supplied, to judges or to parties, to defend or challenge judicial decisions.

To give an initial flavour of the issues that these *consilia* deal with, I shall briefly offer one example from each of the fifteen authors. Laurentius Calcani (fl. fifteenth century) considers whether there was sufficient testimony in a sodomy case, when one of the witnesses was the passive partner and the other was lying under the bed, from where he could hear the active partner's entreaties and feel the vibrations.¹⁹ In 1388, Angelus de Ubaldis considered the following problem: when a man arrived at a castle, intent on murder, he was met by one of the inhabitants, who encouraged him saying 'That will be a good deed': did these words constitute ordering, planning or merely aiding homicide?²⁰ Ludovicus de Pontanis (d. 1439) also advised on this matter of assisting homicide: when a statute prescribes a penalty for all who were 'present' at a killing, can this apply to those who were there by chance or did nothing?²¹ When a statute doubles the ordinary penalties for crimes committed on the feast of the Assumption of the Virgin Mary (15 August), does this include those committed during the night following the feast day?²² Are the injuries and deaths that occur during boys' stone-throwing games to be tolerated or punished?²³ A nobleman assaults and kills a pimp; is this covered by the impunity granted to those who hit pimps?²⁴ Similarly, is the death penalty to be imposed when a man battered a pregnant woman so hard that she miscarried?²⁵ Given that bandit-killing

¹⁸ Lucchesi, *Si quis occidit occidetur*, p. xxvii.

¹⁹ Laurentius Calcani, *Consilia* (Lyon, 1549), *consilium* 110.

²⁰ Angelus de Ubaldis, *Consilia*, *consilium* 22.

²¹ Ludovicus [de Pontanis] de Roma, *Consilia* (Venice, 1493), *consilium* 117.

²² Fredericus de Petrucciis, *Consilia* (Siena, 1488), *consilium* 44.

²³ Petrus de Ankarano, *Consilia* (Rome, 1474), *consilium* 285.

²⁴ *Consilia domini Benedicti Caprae et Ludovici de Bologninis* (Lyon, 1556), *consilium* 63.

²⁵ *Consilia ac questiones famosissimi utriusque iuris monache domini Signoroli de Homodeis* (Milan, 1521), *consilium* 1.

is permitted without penalty, can a woman poison her bandit-husband, in order to marry her lover?²⁶ Paulus de Castro advised on whether breaking down a door, with intent to enter a house and rape a woman, could be punished under a statute penalising acts of ‘violence’.²⁷ When do criminal clerics lose the benefit of clergy that means they cannot be tried by secular judges?²⁸ Can Jewish moneylenders be obliged to restore goods deposited with them if they turn out to be stolen?²⁹ Criminals pardoned and released from prison at Easter and Christmas are required to have made peace with their victims, but how can a blasphemer be released, since his victim is God?³⁰ Does a conviction for fornication render the offender ‘infamous’?³¹ Can a wife, returning to her husband after a period of separation, require him to give surety not to harm her?³²

As this brief survey shows, *consilia* dealt with all crimes, from sex crimes and violence to theft and the disposal of stolen goods; with all kinds of criminals, male and female, adult and children, Christian and Jew, clerical and lay; and with all points along the judicial process, from initial denunciation to the killing of bandits. The sort of doubts that consultants were mostly asked to resolve, however, required the resolution of verbal ambiguity and imprecision in statute law, the classification of actions not envisaged by legislators (is this a crime? if so, what is the penalty?), or a declaration of what constituted sufficient proof. Whoever was paying for the *consilium* – defendant or accuser, or perhaps a judge – wanted an authoritative, persuasive argument, and one that considered and refuted the alternative solutions. In order to build a convincing case, consultants referred to three sources: authoritative texts (mainly Roman, canon and statute law, the Christian Bible, *consilia* and educational works by leading lawyers in the past; also occasionally Aristotle or Aquinas); custom (legal and social practice); and personal experience and observation. It is tempting for the historian who finds the references to Roman law ‘baffling’ to treat the statements of what was customary, or what the consultant had experienced or observed, as if they were objective descriptions of historical reality. But this is, of course, to ignore the rhetorical nature of these texts, aimed to persuade judges.

²⁶ *Consilia criminalia celeberrimi ac prestantissimi utriusque juris illuminatoris domini Bartholomei Cepole Veronensis* (1531), *consilium* 5.

²⁷ Paulus de Castro, *Consilia* (Venice, 1489), *consilium* 379.

²⁸ Alexander Imolensis [Tartagni], *Consilia* (Venice, 1477), *consilium* 8.

²⁹ Johannes de Anania, *Consilia* (1534), *consilium* 70.

³⁰ *Consilia questiones et tractatus Bartoli cum additionibus novis* (Venice, 1495), *consilium* 167.

³¹ *Johannis Calderini et Gaspari eius filii ed Dominici de Sancto Geminiano Consilia* (1491), *consilium* 529.

³² Baldus, *Consilia* (Lyon, 1559), vol. 1, *consilium* 176.

Consilia deal with most crimes and many problems of procedure. Two issues appear most frequently, however: homicide and banditry. Of the 350 *consilia* in my sample, some 56 regard homicide, and some 40 regard banditry. According to Paulus de Castro, judges think that all they have to do in homicide cases is establish the facts and apply the death penalty, without examining the killer's state of mind.³³ Statute law encouraged such an indiscriminate approach, with blanket clauses stating simply that the penalty for homicide was death. But jurists repeatedly pointed out that there were different kinds of homicide – deliberate, accidental, non-intentional – and that death would be too severe a penalty for some of these. To behead someone for accidental killing is contrary to equity, said Baldus (d. 1400).³⁴ This distinction, between degrees of culpability, constitutes the main thrust of all *consilia* on homicide. What was largely absent from statute law was any distinction between *dolus* (malice) and *culpa* (culpability), and consultants interpreted statute as applying only to malicious killing.³⁵ This left a wide margin of cases where the degree of culpability was open to discussion: from cases where the killer could not be held responsible to those where the foreseeable consequences of his action could be attributed to him.

Insanity and pure accident were the most obvious categories of non-culpable homicide. Baldus supported the case for the defence when one Joanninus de Vailate was prosecuted for homicide: before, during and after the event he was said to be 'out of his mind'. As the acts of madmen cannot be said to be voluntary, Baldus declared, Joanninus cannot be punished, 'for when there is neither the will nor the deliberation to offend, there is no authority to punish'.³⁶ The key principle that the death penalty applied only when killing was intentional was also stated in respect of deaths caused by a falling stone,³⁷ by schoolboys throwing stones in a game,³⁸ and by friends in a play-fight.³⁹ This neatly mirrors discussion in the *Digest* of liability under the *lex Aquilia*, for injuries inflicted in boxing matches or javelin-throwing, or by runaway carts and horses.⁴⁰ Ancient jurists saw those who caused such injuries, in sport or by negligence, as liable; medieval jurists condemned negligence, but excused sport. In addition, medieval jurists argued against a strict interpretation of the law in cases where several men participated in a killing, but where there was only one mortal wound on the corpse (see above, p. 91). If it could not be established which one of

³³ Paulus de Castro, *Consilia, consilium* 192; Lucchesi, *Si quis occidit occidetur*, pp. 65–9.

³⁴ Quoted in Cepolla, *Consilia, consilium* 30. ³⁵ Lucchesi, *Si quis occidit occidetur*, pp. 4, 49–67.

³⁶ Baldus, *Consilia*, vol. 3, *consilium* 345. ³⁷ Baldus, *Consilia*, vol. 5, *consilium* 222.

³⁸ Cepolla, *Consilia, consilium* 30. ³⁹ Cepolla, *Consilia, consilium* 31.

⁴⁰ *Digest*, 9.2.7–10, 9.2.52.

them dealt that fatal blow, should all of them be executed, or none of them? The former decision could be attacked as inappropriate, the latter as absurd.⁴¹ Baldus advised on such a case in Milan: Vincenzo was attacked and sustained two wounds, one to the stomach from a bread-knife, and one to the shoulder from a sickle. Of his two assailants, only one, Ambrosio, was captured, and he sought to prove, using medical evidence, that his wound, to the stomach, was not the one that caused Vincenzo's death. In considering this, Baldus admits that according to the Roman 'law on killers and poisoners' (*lex Cornelia de sicariis et veneficis*) both assailants should incur the death penalty, as one killed and the other had the intention to kill; but Baldus argues that many jurists would distinguish between deadly and non-deadly weapons, and between wounds to different parts of the body, some fatal, some not.⁴² On these grounds he concludes that Ambrosio should be punished for wounding only. Such distinctions became the norm. In a similar case, Petrus de Ancharano declares that it is better to absolve the one guilty party than condemn the two innocent, that to hold all three participants responsible for the death would be 'most severe', and that 'in crimes the intention (*voluntas*) is to be scrutinised, not the outcome'.⁴³ In a case before the Podestà of Parma, another jurist advised that, if it was not clear which assailant dealt the fatal blow, then all the assailants could only be fined, and none executed, as proof in criminal trials had to be clear.⁴⁴ Clarity of proof and priority of intention over outcome were two of the most common principles deployed by consultants in resolving these and other judicial problems. Neither was uncontested. The frequent assertion that proofs needed to be 'clearer than daylight' was, arguably, a rhetorical formula aimed to confer greater credibility and impartiality on the consultant's opinion;⁴⁵ while the priority given to intention could be answered with another tag, that 'once the crime is completed, the outcome, not the intention, should be examined'.⁴⁶

When death occurred many days after a wounding, the question arose whether to attribute the death to the wound, and whether to punish

⁴¹ S. Caprioli, 'De "modis arguendis" scripta variora', *Studi senesi*, 75 (1963), p. 248. See also C. Fried, 'The *Lex Aquilia* as a source of law for Bartolus and Baldus', *American Journal of Legal History*, 4 (1960), pp. 162–3.

⁴² Baldus, *Consilia*, vol. 1, *consilium* 361. There is apparently an error in the printed text, in that Ambrosio's wound is said first to be the one to the shoulder, then the one to the stomach.

⁴³ Ankarano, *Consilia*, *consilium* 217.

⁴⁴ Tartagni, *Consilia*, *consilium* 16; Lucchesi, *Si quis occidit occidetur*, pp. 116–18. Tartagni follows the reasoning of Gandino on this problem: Kantorowicz, *Albertus Gandinus*, vol. 2, pp. 286–8.

⁴⁵ Lucchesi, *Si quis occidit occidetur*, pp. 48–9.

⁴⁶ Cepolla, *Consilia*, *consilium* 34: 'inspicitur eventus id est effectus et non voluntas quando maleficium est perfectum'.

the assailant for homicide.⁴⁷ Again, consultants, following Baldus, distinguished according to the type of wound and its site on the body, the kind of weapon used, the timing of any medical treatment, the care that the victim took of his own health, and the continuity of fatal symptoms.⁴⁸ If the victim waited two weeks before seeking medical advice for a wound to his arm which, because of putrefaction, caused a fatal fever, then the assailant was not liable.⁴⁹ If the victim was wounded in the foot, but died of an abscess under the arm, then the assailant was not liable.⁵⁰ But when a Modenese nobleman died of his wounds after seven days, having taken expert medical care, then the assailants were liable, as the site of the wounds and the type of weapons used were such as to cause death.⁵¹

If those present at a killing could not be prosecuted for homicide, could they be prosecuted for assisting by advice or support? And if so, what was the penalty? According to Gandino, there was much doubt about this, until academic lawyers agreed that half-penalty should apply.⁵² However, Bernabò Visconti issued a decree in 1358 ordering that those assisting a crime should suffer the same penalty as the chief culprit; the jurist Signorolus in the early fifteenth century thought this too harsh, and sought to distinguish between aid given before, during and after the crime.⁵³ Later in the century, Cepolla considered this problem on three separate occasions. In a case from Treviso, he based his argument on the timing of the alleged assistance (after the fatal wound), and on its intention (mediation and self-defence, not aggression). In a case from Feltre, he maintained that being armed and present at a fight was not enough to qualify as 'assistance', if no concrete help was given. In another case from Treviso, he argued that carrying a spade and helping to bury the victim did not constitute assisting the killing.⁵⁴ In each case, Cepolla resists the equation of those giving assistance with those inflicting injury.

A further problem was that of territoriality. A man living in city A commits homicide in city B, and then returns to city A. Given that it is not lawful for the police or pursuers of city B to capture the killer in the territory of city A,⁵⁵ can the judge of city A prosecute the killer? Baldus advised on the case of a Sienese man who had moved to Arezzo following defeat in a lawsuit against a widow and her sons. After a time, he secretly

⁴⁷ So Gandino: Kantorowicz, *Albertus Gandinus*, vol. 2, pp. 300–5; Lucchesi, *Si quis occidit occidetur*, pp. 25–9.

⁴⁸ Baldus, *Consilia*, vol. 5, *consilium* 501; Lucchesi, *Si quis occidit occidetur*, pp. 143–5.

⁴⁹ Baldus, *Consilia*, vol. 2, *consilium* 136; Lucchesi, *Si quis occidit occidetur*, p. 143.

⁵⁰ Baldus, *Consilia*, vol. 2, *consilium* 237. ⁵¹ Bolognini, *Consilia, consilium* 5.

⁵² Kantorowicz, *Albertus Gandinus*, vol. 2, pp. 280–1. ⁵³ Signorolus, *Consilia, consilium* 134.

⁵⁴ Cepolla, *Consilia, consilia* 1, 2, 27. ⁵⁵ As in Baldus, *Consilia*, vol. 2, *consilium* 209.

returned to Siena, assaulted and killed a kinsman of these children, and returned to Arezzo. There, the judge wanted to prosecute him *ex officio*. Could he do so? For Baldus, the key lay in whether the Sienese man was now domiciled in Arezzo: if so, he could be punished; if not, not. And the requirements for establishing domicile were either ten years' residence or complete removal, with family and household belongings, from Siena.⁵⁶ Without domicile, prosecution conflicted with the principle that the place of the crime was the place of punishment.⁵⁷ The issue of domicile was likewise used by Angelus de Ubaldis to solve similar cases at Lodi in 1380 and Ancona in 1388, in one of which domicile was established, while in the other it was not.⁵⁸

Finally, there was the problem of mandated killing (assassination). The law saw this as an especially hateful crime, because concealed and difficult to prove; it was one of few crimes where even the attempt was penalised, and the punishment of successful assassination was exemplary.⁵⁹ But consultants were again reluctant to follow the rigour of the law. What constitutes a mandate? How is a mandate to be proved? Where is it to be prosecuted? What is the penalty when the statutes do not specify? Baldus was asked whether a mandate could be construed when a man supplied horses for the killers, informed them that their victim would be at a certain place at a certain time, and told them that 'he would give them what he had promised'. This was all too vague to qualify, given that the statutes specified the delivery or promise of *money*.⁶⁰ The key element of monetary transaction was also absent when a father ordered his son to kill.⁶¹ Mandated killings posed such problems for jurists because intention, on which jurists set such store, was shared between the person who ordered and paid for a killing and those who carried it out. The two recurring problems were these: What if the mandator was in one city, and the killing happened in another: could a mandator be punished for something that did not occur within the city's jurisdiction? And what if the mandate was either unfulfilled or exceeded: could a mandator be punished if the killing did not happen or if what happened exceeded his intention?⁶² Ludovicus de Bolognini (1447–1508) had to deal with the first of these problems. A killing was ordered and paid for in Bolognese territory, and committed in Ferrarese territory. Could the judge in Bologna prosecute the mandator? The consultant wants to

⁵⁶ Ibid., vol. 1, *consilium* 393. ⁵⁷ Baldus, *Consilia*, vol. 4, *consilium* 28.

⁵⁸ Angelus, *Consilia*, *consilia* 27, 207 (*recte* 217). ⁵⁹ Lucchesi, *Si quis occidit occidetur*, pp. 97–9.

⁶⁰ Baldus, *Consilia*, vol. 1, *consilium* 98. ⁶¹ Ibid., vol. 2, *consilium* 256.

⁶² Gandino considers the problem of the unfulfilled mandate: Kantorowicz, *Albertus Gandinus*, vol. 2, p. 285.

argue that he can, but his arguments look rather thin and contentious – assassination is such a ‘horrid’ crime, the killing could be said to have its origin in Bologna – and he admits that his argument conflicts with the judicial practice that planning a crime is not usually punished *per se*.⁶³ In considering a case in which the planned assassination did not take place, Angelus found himself up against the same practice: according to Roman law (the *lex Cornelia de sicariis et veneficis* again), the would-be assassin is to be executed, as the *lex Cornelia* punished intention to kill; but custom ‘approved by the whole world’ holds that someone who does not kill is not to suffer capital punishment.⁶⁴ Conversely, if assassins are mandated to wound someone, and they end up killing him, is the mandator liable for their action? Cepolla provides eight arguments in favour of liability, and an equal number against. The arguments in favour all maintain that the immediate consequences of a criminal act can be attributed to those who intentionally committed that act; while the opposing arguments seek to limit liability to the extent of the intention. Cepolla concluded that the mandator should suffer the death penalty, but four fellow-jurists disagreed, mainly, it would seem, because his opinion would base an execution on a fiction (‘he who provides the cause for death is to be held responsible for homicide *as if* he himself had killed’).⁶⁵

The second most frequent problem on which jurists were consulted was banditry. Some of their *consilia* examine secondary or subsidiary questions, such as the civil capacity of bandits (could they make a will or inherit?),⁶⁶ or the imposition of penalties on those who sheltered bandits.⁶⁷ Most, however, are concerned with various aspects of the impunity of killing bandits. This was an almost universal feature of criminal statute law and there was already extensive treatment of the issue by Gandino.⁶⁸ Later jurists also returned to the theme in various treatises.⁶⁹ *Consilia* reveal that there were four areas of ambiguity or uncertainty in the application of such laws: for which crimes was killing of bandits permitted? Where could the killing be done? What about bandits whose status had subsequently been modified in some way? What were the consequences of such killings?

When a statute says that a bandit can only be ‘injured’ (‘offended’), does this include an injury that results in death? Yes, said the master, Bartolus,

⁶³ Bolognini, *Consilia*, consilium 8. ⁶⁴ Angelus, *Consilia*, consilium 14.

⁶⁵ Cepolla, *Consilia*, consilia 34–8; Lucchesi, *Si quis occidit occidetur*, pp. 150–3.

⁶⁶ Baldus, *Consilia*, vol. 1, consilium 243, and vol. 4, consilium 24; Signorolus, *Consilia*, consilium 120; Tartagni, *Consilia*, consilium 75.

⁶⁷ Baldus, *Consilia*, vol. 1, consilium 394; Signorolus, *Consilia*, consilium 125.

⁶⁸ Kantorowicz, *Albertus Gandinus*, vol. 2, pp. 130–50.

⁶⁹ For example, Bartolus’ *Tractatus de bannitis*, in *Consilia questiones et tractatus Bartoli*.

as the term 'offensio' covers all actions for which penalty might otherwise be levied.⁷⁰ In arguing this, Bartolus made a statement of principle which later consultants repeated: that statutes allowing the penalty-free killing of bandits were introduced principally 'to promote the public good (*res publica*) and the quiet of the commune'. Problems in implementing the law were to be resolved bearing this in mind: hence the importance of the legislators' (assumed) intentions in later application. Two other fourteenth-century jurists similarly favoured the 'public good' of eliminating bandits, even though there was genuine ambiguity. In Perugia, the statutes listed those crimes for which bandits could be killed; this list included wounding with bloodshed. A man was convicted of hitting with bloodshed, without the word 'wound' being mentioned; was his killing punishable or not?⁷¹ In Vercelli, the statutes allowed the killing of those banned for capital crimes. A man was convicted of rape (forced sexual intercourse), but sentenced only to a fine, not to death; was his killing punishable or not?⁷²

More substantial was the problem of extra-territoriality. Could bandits be killed outside the territory where they were banned? The precise wording of statute law was a determinant. In Treviso the law allowed bandit-killing up to fifteen miles from the city's territory, which made such killing acceptable.⁷³ In Bologna, the statutes spoke only of 'city and territory', which made such killing unacceptable (indeed, cruel, treacherous and savage, according to the consultant).⁷⁴ The issue was further complicated when adjacent territories were subject to the same lord, as, for example, with a Veronese bandit sheltering in the Vicentino.⁷⁵ When such a lord ordered each city in his dominion to recognise the bans issued by the others, extra-territorial bandit-killing became possible. However, such bans were to be understood as 'fictive' in those other territories.⁷⁶ This is one example of the fact that jurists could only reconcile statute law and regional law by using the concept of fiction (on which see above, p. 92). The other substantial problem involved a bandit whose status had changed after his ban. What happened if he was killed while under a safe-conduct issued by a judge or lord? For Paulus de Castro in the fifteenth century, ignorance of the existence of the safe-conduct and an absence of malice (*dolus*) on the part of the killer excused such killings.⁷⁷ He resorts to a Roman-law touchstone of the subjectivist interpretation of law, namely that 'will and deliberation are what distinguish crimes' ('voluntas et propositum distinguunt maleficia').

⁷⁰ Bartolus, *Consilia, consilium* 188.

⁷² Signorolus, *Consilia, consilium* 170.

⁷⁴ Bolognini, *Consilia, consilium* 57.

⁷⁶ Signorolus, *Consilia, consilium* 89.

⁷¹ Petrucci, *Consilia, consilium* 58.

⁷³ Cepolla, *Consilia, consilium* 8.

⁷⁵ Baldus, *Consilia*, vol. 1, *consilium* 401.

⁷⁷ Paulus de Castro, *Consilia, consilium* 34.

This problem could become entwined with that of territoriality, as in a case considered by Baldus.⁷⁸ One Henrichettus had been banned from Verona for homicides and robberies. He was then killed in the territory of Vicenza. The Podestà of Vicenza prosecuted the killers. This became problematic because Verona and Vicenza were ruled by the same family, the della Scala. It was said, in support of the prosecution, that Cansignorio della Scala had granted Henrichettus licence to stay in the Vicentino; it was objected that the della Scala had issued a statute ordering that any capital bandit of Verona be banned also from the territory of Vicenza. Baldus again resolves this conundrum by implicit reference to the public good: Henrichettus' name was still in the register of bandits; ignorance of the permit, on the part of the killers, excused their action. What if a bandit had secured release from the ban by government order (*reformatio*), but was subsequently killed? Ignorance of the order once again constitutes an excuse.⁷⁹ Angelus de Ubaldis, in dealing with the same problem, is again forced to deploy the concept of fiction.⁸⁰ In the first part of his answer, he makes his decision dependent on the wording of the *reformatio*: if it says that the bandit is 'fully restored [we would say 'rehabilitated'] as regards any registers whatsoever', this must include the register of bandits. And how can there be a 'full' restoration, if the bandit can still be killed with impunity? This line of thinking then leads Angelus to the opinion that, if the killing occurred before the cancellation of the ban could actually take place, then this too is no longer unpunishable, because the effect of the 'full' restoration is to 'feign' that the ban never happened. Again, executive action can only be accommodated by fictive stretching of the law. Fictiveness also hovers over other cases, for example, bans cancelled illegitimately (to be treated as 'not done'),⁸¹ or pardons obtained 'falsely and surreptitiously' (it does not matter that the killer did not know that the pardon was invalid).⁸²

Finally, some of the consequences of bandit-killing were also examined. First, the issue of reward. Many cities offered rewards to those who delivered bandits, dead or alive, to the authorities. Reward might be monetary or might consist of the right to release another bandit from his ban. But did a killer have to know that his victim was a bandit, in order to claim the reward? No, says Baldus, as eliminating a public enemy always deserves recompense.⁸³ Baldus was also asked whether killing a bandit broke a promise not to injure any member of the bandit's family. In 1383, Balduccio

⁷⁸ Baldus, *Consilia*, vol. 3, *consilium* 9.

⁸⁰ Angelus, *Consilia*, *consilium* 288.

⁸² Tartagni, *Consilia*, *consilium* 114.

⁷⁹ Ibid., vol. 4, *consilium* 142.

⁸¹ Cepolla, *Consilia*, *consilium* 7.

⁸³ Baldus, *Consilia*, vol. 5, *consilium* 428.

Boccognani of Borgo San Sepolcro promised, for himself and for his brothers and their heirs, not to injure any member of the Roberti family, but subsequently his brother killed Niccolò Roberti, who was a bandit. Again, consideration of the public good would seem to be the basis for Baldus' negative reply.⁸⁴

Three other problems occur in *consilia* with some frequency: torture, proof by witness testimony, and the penalty for multiple offences. The comments and opinions of Baldus would certainly support the view that torture was used excessively and unlawfully by judges. He implies as much when (possibly quoting Gandino) he urges that torture is not to be used in all crimes, nor in all cases, but only when the truth cannot be discovered by other means,⁸⁵ and that it is superfluous to use torture when the truth is already evident.⁸⁶ This is also implied by the two major problems that jurists advised on: what constitutes sufficient incriminating evidence (*indicia*) to apply torture? Are confessions made under torture valid, if there is insufficient incriminating evidence? The reason for the first question being so frequently asked of jurists is that, as Baldus explains, 'no certain rule can be given'.⁸⁷ Baldus does, however, state that *indicia* have to be 'certain, probable, and likely', such that the judge is 'almost certain'.⁸⁸ And what this meant in practice is clear in those cases where he denies that the *indicia* are sufficient: ill-fame is not enough on its own;⁸⁹ a single witness is not enough, unless combined with ill-fame;⁹⁰ in a homicide case, the combination of hearsay, suggested enmity between suspect and victim, and flight of the suspect from the scene is not enough.⁹¹ Given this caution in advising on torture, it is not surprising that jurists also maintain that confessions made under torture in the absence of existing, legitimate *indicia* are not valid.⁹²

A problem that concerned Bartolus, but apparently no one else, was the character and limit of eye-witness testimony. Witnesses, he said, were to

⁸⁴ Baldus, *Consilia*, vol. 2, *consilium* 55.

⁸⁵ Baldus, *Consilia*, vol. 2, *consilium* 471; Kantorowicz, *Albertus Gandinus*, vol. 2, p. 156.

⁸⁶ Baldus, *Consilia*, vol. 3, *consilium* 360.

⁸⁷ Ibid., vol. 1, *consilium* 259. Thus too Gandino: Kantorowicz, *Albertus Gandinus*, vol. 2, pp. 159–60.

⁸⁸ Baldus, *Consilia*, vol. 1, *consilium* 259; vol. 3, *consilium* 77.

⁸⁹ Ibid., vol. 3, *consilia* 77, 78; likewise, Ankarano, *Consilia*, *consilium* 254. Gandino stated that *fama* is commonly seen as sufficient, but that the contrary can be argued according to *ius commune*. Kantorowicz, *Albertus Gandinus*, vol. 2, p. 174.

⁹⁰ Baldus, *Consilia*, vol. 2, *consilium* 471. Cf. the opposite opinion in Gandino: Kantorowicz, *Albertus Gandinus*, vol. 2, p. 172.

⁹¹ Baldus, *Consilia*, vol. 5, *consilium* 500.

⁹² Johannes de Anania, *Consilia*, *consilium* 12; Baldus, *Consilia*, vol. 5, *consilium* 460. Thus too Gandino: Kantorowicz, *Albertus Gandinus*, vol. 2, p. 167.

attest only to what they perceived by their bodily senses of sight, hearing, and so on. There was then a line between perception and interpretation that witnesses should not cross. Witnesses cannot therefore attest to things that they judge, rather than perceive, such as negligence, or intention (for example, an intention to inflict injury only as discipline or in self-defence). Negligence cannot be perceived; an act can only be interpreted as negligent.⁹³ Though this concern does not seem to surface in later consultants, they too impose limits, of a different sort, on testimony, or more specifically on the type of person who can testify. Testimony from prostitutes, children and enemies of the defendant may not be admitted.⁹⁴ The confession of a chief suspect cannot be used as evidence against accessories.⁹⁵

Given the nature of 'tariff-justice' in the civic statutes, the problem arose of how to reckon the total penalty when offences were repeated. When a single blow to the body results in several wounds, is the penalty to be multiplied by the number of wounds?⁹⁶ When a blasphemy is repeated on separate occasions – in this case 'If God were to say that, I'd call him a liar' – does this count as one act of blasphemy or several?⁹⁷ Is adultery to be considered as a continuous, single offence, or a repeated one?⁹⁸ And when the statutes prescribe hanging as the penalty for a third offence of theft, how are those offences to be counted: are thefts committed outside the territory to be included in the count? or thefts committed long ago and only now coming to light?⁹⁹ Generally, jurists take a more lenient line on number. One act = one crime = one penalty. A single blow is to be punished as such, even if it caused multiple injury. The same blasphemy repeated is to be punished as one criminal act. Similarly, with adultery, since no new harm results from the repetition, only one penalty is to be imposed. And thefts committed outside the territory or in the past do not count.

Throughout this survey, a repeated theme is the resistance of consultants to the rigour of statute law and the apparent intentions of legislators. It was because recourse to consultants led to the avoidance or reduction of penalties that Giangaleazzo Visconti banned it in criminal trials.¹⁰⁰ The marquis of Mantua later complained of the way that lawyers 'pull the law about' in

⁹³ Bartolus, *Consilia, consilia* 102, 104, 110.

⁹⁴ Baldus, *Consilia*, vol. 3, *consilium* 138; Tartagni, *Consilia, consilia* 11, 64.

⁹⁵ Baldus, *Consilia*, vol. 1, *consilium* 95.

⁹⁶ Ibid., vol. 2, *consilium* 351; vol. 3, *consilium* 473; vol. 5, *consilium* 427.

⁹⁷ Copolla, *Consilia, consilium* 76. ⁹⁸ Bartolus, *Consilia, consilium* 222.

⁹⁹ Baldus, *Consilia*, vol. 3, *consilium* 48. Gandino (Kantorowicz, *Albertus Gandinus*, vol. 2, p. 308) had already rejected the accumulation of extra-territorial thefts.

¹⁰⁰ Lucchesi, *Si quis occidit occidetur*, pp. xxii–xxiii.

the interests of their clients.¹⁰¹ However, the character of criminal justice presented by *consilia* is one in which excess is committed by judges: exceeding the letter of the law and the legislator's intentions, exceeding principles of equity and reason, exceeding due process and criteria of proof. Judges indiscriminately prosecute all those involved in a killing or assault, irrespective of their degree of culpability. They use torture freely, act outside their territorial jurisdictions, gather evidence from suspect sources, and count crimes in such a way as to magnify or aggravate the penalty. To counter these tendencies, consultants deployed a repertoire of arguments, seemingly contradictory among themselves: sometimes resting on a literal reading of inadequately drafted statute law (as with assassins), sometimes insisting that statute law needed to be interpreted (as with other homicides); sometimes giving prominence to the criminals' intention, sometimes to the legislator's (the public utility of bandit-killing). This seeming contradiction is probably to be resolved within the complex history of statute interpretation (which lies outside the scope of this work). Whether to interpret statute law restrictively or extensively was much argued over in Italian law-schools, and the relationship between statute (*ius proprium*) and *ius commune* is a major theme of much legal history.¹⁰² The point remains that *consilia* present a picture of criminals that focuses on intention, and a picture of criminal justice that focuses on judicial excess.

Consilia give us another way to connect legal history and social/political history. This is most evident in the themes of bandit-killing, where consultants attempted to defend instances of what seems to be a widespread practice, and territoriality, where the political realities were with difficulty translated into judicial practice. Yet the complexity of the connection is also revealed: consultants' opinions were formed by strong traditions of legal analysis, in which the reference to Roman law and the influence of Baldus are all too evident.

¹⁰¹ Chambers and Dean, *Rough Justice*, p. 262.

¹⁰² See, in general, Sbriccoli, *L'interpretazione dello statuto*; M. Bellomo, "Factum" e "ius". Itinerari di ricerca tra le certezze e i dubbi del pensiero giuridico medievale', in Bellomo, *Medioevo edito ed inedito*, vol. 2, *Scienza del diritto e società medievale* (Rome, 1997).

PART TWO

Description and analysis

CHAPTER 6

Insult and revenge

Filthy worm-head.

You're lying in your throat, filthy, rotten woman.

I hate you.

Go on, rotten prattler. God give you ill-fortune. Filthy, shitty ass, why do you come round here with your prattle?

While you were a local official, you took some fish from me as 'tribute'.

Go on, go and talk to your mates, the whores. You shouldn't be talking to good women.

I hate you like a dog. I shall punch and kick you.

Ugly, rotten pimp.

You're a devil and a piece of filth.

Thief and rogue.

You'd better think of leaving your house, otherwise I shall chase you from Savona, knock your sons' heads off and break your ribs.

Look at this shame.

By Christ's body, I shall have to hit you on the head.

Mad boy.

Do your worst.

Witch-whore.

I shall cut your throat and put the boot in.

Ugly, shameful woman, you take men in your anus.

Go and get fucked.

False Jewess, you don't know what you've got coming to you.

Rotten pimp, we shall chase you from your house.

Rotten dog whore.

Rotten donkey, ribald.

You robbed me.

Ugly, rotten whore.

I'm going to have to poke my fingers in your eyes, as you punched me in the face.

I want to see you dragged through this town.

These are just some of the forty-eight insults prosecuted in Savona in one year in the fourteenth century.¹ They are a representative sample from this city's court records, as the remainder take similar forms. 'I hate you' was common (three further instances in the same year), as was 'You're lying in your throat' (six other instances). In their mixture of threats, challenges, imprecation and defilement, the range and types of insult here share many features with insult in larger cities, while also differing in some respects. Insult everywhere works its effects by using three great archetypes – sex, defecation, rottenness – allied to various registers, namely of the body (and its punishment), the devil and animals.² So here in Savona, the body is attacked as diseased ('worm-head'), as visually unattractive, and as engaged in transgressive sex.³ Women are labelled as whores, following a general European pattern in which insults against women took the form of naming and seeking to punish alleged prostitutes. Associations with whoredom – real or suspected – were thought of as polluting the neighbourhood, and neighbours responded by seeking to exclude those women they suspected of prostitution.⁴ Finally, in the 'impersonal expressions of necessity',⁵ such as 'It's necessary for me to hit you', insult represents the sharp end of a shame culture as it attempts to deal with those committing actions disapproved of by the community: hence the commands to leave the neighbourhood, and the threats of punitive violence.

Complementary to the 'rigid code' of insult is sometimes a plasticity and inventiveness of expression, a ludic quality.⁶ In Savona, however, this is mainly absent. Absent also are some of the cruder, blasphemous insults uttered elsewhere, the disease curses and the extended narratives of observed neighbourhood life.⁷ There are narrative fragments in only a few cases: for example, the man who called a woman a whore and showed her a written list of six names, alleging that 'These six are the men who have come out of your house',⁸ a sign of neighbourhood watchfulness over the comings

¹ Archivio di Stato, Savona, Serie Ia, Comune di Savona, 1173, 'Liber parlamenti et condempnacionum . . . domini Johanoli de Vicecomitibus . . . potestatis . . . civitatis Saone'. See appendix for the original texts.

² Ibid., p. 391.

³ M. Madero, 'L'injure et le corps en Castille aux XIII^e et XIV^e siècles', in *L'invective au Moyen Âge: France, Espagne, Italie*, ed. E. Beaumatin and M. Garcia (Paris, 1995), pp. 234–6.

⁴ L. Gowing, *Domestic Dangers: Women, Words and Sex in early modern London* (Oxford, 1996), 97–101.

⁵ B. Williams, *Shame and Necessity* (Berkeley, 1991), p. 75.

⁶ C. Gauvard, 'Conclusion', in *L'invective au Moyen Âge*, pp. 253–4.

⁷ As I have examined in T. Dean, 'Gender and insult in an Italian city: Bologna in the later Middle Ages', *Social History*, 9 (2004).

⁸ Archivio di Stato, Savona, Serie Ia, Comune di Savona, 1173, 'Liber parlamenti et condempnacionum', fol. 42v.

and goings of men in the houses of married women. Also absent is any hint that insult was practised as a sort of street game, filling the air with impossible-sounding slanders, as I have suggested was practised in Bologna.

Nevertheless, the general pattern of insult usage in Savona conforms to that already established by historians for cities such as Todi.⁹ In these places, as in Bologna, there is a basic gender division both among speakers and among victims of insult. Threats of injury, challenges and the imprecation of ill-fortune are exclusively used by men, and mainly against other men. Women can only wish on men the infliction of violence by other men ('I want to see you dragged through this town'). Women are insulted through their sexuality or sexual decency, men through their roles as carriers of public trust, or through their 'honesty, courage and worth'¹⁰. These insults in Savona, however, mark no transgression of social hierarchies: they are uttered by servants, fishermen, tailors, innkeepers, dyers, butchers, masons, spinners, gardeners and shoemakers against their fellow-artisans and traders, and their wives and servants.

Compare a case that arose in Palermo in 1328.¹¹ A nobleman, knight and citizen, Giovanni Aiello, was in front of his house one evening when the 'master of the civic guard' passed by uttering 'many and enormous insults' against him, because of which a near-riot occurred. Over twenty witnesses gave evidence to the nature of the insults. They do not all agree on the exact words used: they all remember the core of the exchange, and some remember additional elements. Putting all these memories together, the exchange between Giovanni Aiello and the master of the guard might have gone something like this:

WOMAN I don't know why all those armed men are going around saying 'We're going in.'

GIOVANNI AIELLO They're talking about my servant. [*To the master of the guard*]
My servant is at home. Do you want to arrest him in my house?

MASTER OF THE GUARD You usually keep brigands with you, but now I shall put my foot on your throat. Every day we find men with prohibited weapons who say they are staying with Lord Giovanni Aiello.

⁹ D. R. Lesnick, 'Insults and threats in medieval Todi', *Journal of Medieval History*, 17 (1991); Dean, 'Gender and insult'. See also P. Burke, 'Insult and blasphemy in early modern Italy', in Burke, *The Historical Anthropology of Early Modern Italy* (Cambridge, 1987).

¹⁰ M. Greenshields, *An Economy of Violence in Early Modern France: Crime and Justice in the Haute Auvergne, 1587–1664* (University Park, 1994), 233. And see Strocchia, 'Gender and the rites of honour in Italian Renaissance cities', pp. 54, 56–7.

¹¹ *Acta curie felicitis urbis Panormi* (12 vols., Palermo, 1982–96), vol. 5, *Registri di lettere ed atti* (1328–1333), ed. P. Corrao (1986), pp. 9–17; I. Peri, *La Sicilia dopo il Vespro: uomini, città e campagne, 1282–1376* (Rome and Bari, 1982), pp. 306–7.

GIOVANNI AIELLO You're lying in your throat, like the priest's bastard that you are, for I don't keep brigands but good men.

MASTER OF THE GUARD You're lying in your throat like a rotten, evil, ruffian, cuckold and traitor. Sir Shit. Cripple-legs. Mouth-stinking bastard. You're no knight. I'll show you tomorrow that I'm a better man than you are. I'm an official and I will kill you.

GIOVANNI AIELLO'S WIFE Leave us in peace, brother. Some other year, you'll be a justiciar, and you will have to honour us because of our cousin, Lord Giovanni Cosmeri.

MASTER OF THE GUARD As for you, you rotten bitch-harlot . . .

As I have argued in relation to Bolognese insults, when verbal abuse ascended the social hierarchy it doubled and trebled its lines of attack. Here some standard masculine exchanges (liar, bastard, traitor) are supplemented by aspersions on Giovanni Aiello's bodily appearance, his status as a knight, and his worth as a man. Social distance creates the need for 'thick' insult. To these affronts the knight and his wife reply, as Pietro Corrao has put it, with irony on the notary's future career, a reminder of their relations with a powerful Palermo family, and a final mixture of disdain and ironic paternalism.¹²

The 'thickness' of insult also became an issue for legal definition. Bartolus was asked to advise on a case that arose at Chiusi.¹³ The local statutes prescribed a certain penalty for every insulting word, and Bartolus was asked for guidance on how to define and count insulting words: when several words with the same meaning were uttered, did this count as one word or many words? In his response, Bartolus first laid down some basic principles: that an 'insulting word' can be an utterance (*oratio*) as a whole, but not every word in that utterance; that several words with different meanings count as separate insults, whereas different words with the same meaning, or one qualifying another, are to be counted as one word. Bartolus then examined the utterance in question, made by a man, Niccolò, against a married woman: 'Dirty, deformed woman, provocative whore, I've had three children by you, you dirty, sick beggar. Your mother went begging and gave birth to children in the stables.' Then Niccolò turned to her brother and said 'Your sister is a whore, and her daughter. May your soul be accursed, and your father's, may there be as many devils after his soul as he had dogs following him.'¹⁴ These utterances contain over sixty words,

¹² *Acta curie felicitis urbis Panormi*, pp. xxviii–xxix.

¹³ *Consilia questiones et tractatus Bartoli*, vol. 1, *consilium* 108.

¹⁴ 'Soza ydola malfata incendiosa putana cheio theo tratte tre herede del corpo sozo amalato mendico che tua madre se cercava e faceva figlioli per le stalle' and 'Tua sorella e pur putana e la figliola. Va

but Bartolus computed the insults at just eight. Though his calculation is not exactly clear (the printed text might be defective), six of his eight insults are: bodily deformity, prostitution, disease, beggary, shameful parturition and cursing of the soul. On this basis, he amended the judge's sentence, reducing the fine to 8 *lire*, evidently 1 *lira* for each insult. Bartolus thus reduces a string of foul words to a set of categories relating to the body, the soul, and social status. The insult aimed first to lower the victim to the level of something dirty, and then to expel the victim from the community;¹⁵ hence the conjunction of dirt, whore, beggar and hell.

These examples support the picture of a street culture full of insulting shouts and gestures that is to be found in the fictional literature. The priest Arlotto exchanges insults with women in the streets and doorways.¹⁶ A Veronese man at Tolentino marvels at an 'unjust' statute penalising the obscene 'fig' gesture: in Verona, he says, they teach boys how to do this.¹⁷ The first blasphemy that Germans learn when they come to Italy, according to a tale by Sabadino degli Arienti, is 'May you shit blood.'¹⁸ In various tales by Franco Sacchetti, another disease-curse, 'May you get the dog-worm', is uttered by a lord against his buffoons, a peasant against a wolf, a husband against his wife, and a nobleman against his servant.¹⁹

Many city statutes laid down penalties, always monetary, for insult. At Savona, the statutes simply appointed a variable penalty, with a maximum of 20s.²⁰ This avoided two problems that other cities' statutes hinted at: how to define what was insulting, and how to count the number of insults in order to apply a penalty. For example, statutes, such as those of Arezzo, that penalised the utterance 'You lie' or 'other insulting words' with a fine, variable according to the 'quality of the words', left both issues entirely open, to be decided presumably by judicial discretion.²¹ Padua took a similar approach: 'what are and are not insulting words is at the Podestà's discretion'.²² But how was a Podestà to decide, given the sheer variety of words at which people took offence? Other legislators desired to forestall possible problems of interpretation, either by limiting or by defining what was to be considered an insult. Some cities penalised insults uttered only

che maledecta sia l'anima tua e del tuo padre e tanti diavoli habiano l'anima sua quanti furono li cani che se meno dereto.'

¹⁵ S. Gompertz, 'L'injure, le code, l'exclusion', in *Exclus et systèmes d'exclusion dans la littérature et la civilisation médiévales* (Aix-en-Provence, 1978), p. 387.

¹⁶ *Motti e facezie del piovano Arlotto*, ed. G. Folena (Milan and Naples, 1995), nos. 73, 74.

¹⁷ Sabadino degli Arienti, *Le Porretane*, ed. B. Basile (Rome, 1981), no. 3. ¹⁸ *Ibid.*, no. 46.

¹⁹ Sacchetti, *Il Trecentonovelle*, nos. 144, 177, 192, 213.

²⁰ *Statuta antiquissima Saone (1345)*, ed. L. Balletto (Genoa, 1971), p. 30.

²¹ *Statuto di Arezzo (1327)*, ed. Marri Camerani, p. 202. ²² *Statuta patavina*, fol. 104.

in the town hall and the law-court itself, before the civic council and the judge.²³ Modena allowed accusations only for ‘cuckold’ (*cucurbita*) and ‘You’re lying in your throat’, or for casting in someone’s teeth the killing of a male kinsman (a form of provocation known as ‘improperation’).²⁴ Cesena had a longer list, ranging from the serious to the so-common-as-to-be-meaningless: ‘traitor, false cuckold, pimp, robber, thief, goat, ribald, heretic, sodomite’ and ‘whore, pimp’ were to be fined at 10 *lire*; ‘You’re lying in your throat’ was to incur a penalty of 2 *lire*; but there was to be no punishment for ‘Te nascha el vermechane’ (‘Get dog-worm’) or ‘Go hang yourself’, as they were ‘more everyday and of little importance’.²⁵ In Fabriano, the statutes stated that saying to a citizen ‘You’ve eaten farro soup’ was to be treated as an insult (the power of these words presumably lying in the fact that farro soup was a peasant dish).²⁶ Some statutes included insulting gestures, for example Benevento’s – making the fig-sign with the fingers or showing the buttocks.²⁷ Fabriano, like Benevento, also penalised socially-upward insult (‘to someone of greater dignity’) more heavily than downward.²⁸ But the problem of defining precisely which words could be insulting led some legislators into strange waters: the mid-fifteenth-century Lucchese statutes declare that ‘if anyone says any words ironically, or uses veiled words that mean one thing in themselves and something else by intention (*ex mente*)’, he is to incur the ordinary penalty for insult, and the judge is to have licence to interpret such ‘obscure words’.²⁹ Apart from the definition-defying suggestion that any word can be insulting in the right conditions, what is perhaps here being penalised is not the word itself, but the intention to insult (*animus iniurandi*). This accords with statutory treatment of the second problem, that of counting insults. Some statutes (as seen above) imposed a fine for each insulting word uttered, but others stated that several words, uttered once, on the same occasion, counted as only one word.³⁰ Legislators thus took one of two perhaps contradictory paths: declaring which words were, in the terms used by one statute, ‘horrible’, as if the offence resided in the word itself; or recognising that perception of insult depended on context (status, place), usage (the everyday,

²³ For example, *Statuto del Podestà dell’anno 1325*, in *Statuti della repubblica fiorentina*, ed. G. Pinto, F. Salvestrini and A. Zorzi (Florence, 1999), p. 222.

²⁴ *Statuta civitatis Mutine anno 1327 reformata* (Parma, 1864), p. 378.

²⁵ *Statuta floride et alme civitatis Cesene*, clause 32. On the ‘vermocene’ insult, elsewhere rated as near-blasphemous, see Dean, ‘Gender and insult’, pp. 224–5.

²⁶ *Lo statuto comunale di Fabriano (1415)*, ed. Avarucci and Paoli, p. 135.

²⁷ *Statuta civitatis Beneventi* (Benevento, 1717), pp. 86–7.

²⁸ *Ibid.*; *Lo statuto comunale di Fabriano*, pp. 131–2. ²⁹ *Statuta lucensis civitatis*, IV.188.

³⁰ *Statuta civitatis Aquile*, ed. A. Clementi (Rome, 1977), p. 302; *Le additiones agli statuti di Cuneo del 1380*, ed. D. Sacchetto (Cuneo, 1999), p. 42; *Statuti della città di Roma*, ed. Re, p. 108.

the ironical) and the assumed intention of the speaker. Statutes thus bear the imprint of juristic discussion: just as legislators wanted simply to have all killers executed, while jurists insisted on distinguishing among types of homicide on the basis of intention, so too some legislators wanted to punish all insulting words, while others distinguished among them, again with intention as a criterion.

Two of the insults from Savona were in fact blasphemies: 'God give you ill-fortune', 'By Christ's body'. Insult shared a common and uncertain border with blasphemy, a more serious crime of speech. Blasphemy was (and is) difficult to define. It in turn had soft boundaries with other sins, and its definition evolved across the Middle Ages. There was a long and persistent identification of blasphemy with improper oaths and with the sin of anger. Pope Gregory IX's Decretals had broken this tradition, by placing blasphemy among the sins of speech. Aquinas in turn saw blasphemy as a sin against faith, facilitating a subsequent slide in meaning towards heresy. Some jurists elevated blasphemy to an atrocious crime and saw it as an attack on divine majesty, a form of *lèse majesté*, while others took it more towards sacrilege and iconoclasm by considering blasphemy by deed as well as by word.³¹ The fifteenth-century preacher Giovanni da Capistrano declaimed that blasphemy was worse than homicide, and that blasphemers were worse than Jews, because every blasphemy spilled Christ's blood anew.³² Like sodomy, blasphemy was increasingly seen as a source of disasters inflicted by God's anger.³³ A decree of Carlo Malatesta, lord of Rimini, in 1397 reminds hearers that it is the duty of rulers to ensure that their subjects do not incur divine anger, to prevent sin, and to seek divine protection against perils and evils; and further declares that God hates blasphemy, idolatry and sodomy above all other detestable vices, and that God shows this constantly through terrible signs and revenges, such as floods, lightning, storms, plagues, war, famine and earthquake.³⁴ A decree of the duke of Savoy in 1430 likewise states that divine honour is offended by blasphemers and by those who deny and spit on God, or swear by parts of Christ's body.³⁵ This decree includes a quotation from the Old Testament prophet Isaiah, a useful indicator of the legislator's attitude, as Isaiah presents a vision of divine judgement and anger against a rebellious, haughty and degenerate people, who proclaim their sin like Sodom, whose speech and deeds

³¹ Leveleux, *La parole interdite*, pp. 79–120. ³² Ibid., pp. 132–3.

³³ Ibid., p. 151; L. Otis, 'Une contribution à l'étude du blasphème au bas Moyen Âge', in *Diritto comune e diritti locali nella storia dell'Europa* (Milan, 1980), pp. 215–16.

³⁴ G. Bagli, 'Bandi malatestiani', *Atti e memorie della Deputazione di storia patria per la Romagna*, 3rd ser., 3 (1884–5), pp. 80–1.

³⁵ *Decreta Sabaudie ducalia*, fol. 4.

defy God, and whose rulers mislead them. However, despite this legislative urgency, prosecutions for blasphemy remained rare, a sign perhaps of its great social toleration, since it was seen as a victim-less crime, and associated with pleasures (the tavern, gambling) or with virile anger.³⁶ In north and central Italy, the statutory penalties were predominantly financial, ranging from a few pence to hundreds of *lire*, though sometimes including a mandatory period in prison as well.³⁷ Decrees, such as that of Galeazzo Visconti in 1378, prescribing corporal penalties only, seem rare.³⁸ Otherwise, only if fines were not paid was there a tendency to target the offending tongue for physical punishment.³⁹ It is sometimes said that medieval 'clerks are often strangely silent about the actual blasphemous expressions';⁴⁰ but this is not true of Italy. Some statutes specify the blasphemies that are to incur penalties: oaths by Christ's body, Mary's blood or God's bowels⁴¹ or by the head, hair, blood, wounds, bowels or limbs of Christ; imprecations against the sanctity or virginity of Mary;⁴² or denials that God can act.⁴³ Calling on God to inflict disease was also penalised: 'naming the filthy word that is called "vermocane"';⁴⁴ 'rabies, shit-blood, *vermocane*, bubo or fever'.⁴⁵ Specific actions too were included: hitting, spitting on, or throwing dirt at sacred images or crosses.⁴⁶ This typology reflects the accumulated phases in the evolution of the crime of blasphemy: improper oaths (by Christ's blood); unorthodoxy (denying Mary's purity, as suggested by references to her blood – presumably menstrual, as in her 'bleeding cunt'); challenging God's benevolence (calling down disease or misfortune). The sparse record of prosecution, however, is rather milder. Prominent among prosecuted blasphemies was 'Despite God' (or Mary or a saint),⁴⁷ words so ambiguous that Baldus classified them as insult, not blasphemy.⁴⁸

³⁶ Leveleux, *La parole interdite*, p. 239.

³⁷ Pertile, *Storia del diritto italiano*, vol. 5, pp. 435–9; E. Horodowich, 'Civic identity and the control of blasphemy in sixteenth-century Venice', *Past & Present*, 181 (2003), p. 7; *Statuti della città di Roma*, p. 121.

³⁸ C. Santoro, *La politica finanziaria dei Visconti: Documenti*, vol. 1 (Varese, 1976), pp. 305–6.

³⁹ *Statuto di Arezzo* (1327), p. 223; *Statuti di Ascoli Piceno dell'anno MCCCCLXXVII*, pp. 87–8; *Lo statuto comunale di Fabriano* (1415), pp. 126–7; *Statuta lucensis civitatis*, IV, 93.

⁴⁰ B. Lindorfer, 'Peccatum linguae and the punishment of speech violations in the Middle Ages and early modern times', in *Speaking in the Medieval World*, ed. J. E. Godsall-Myers (Leiden, 2003), p. 35.

⁴¹ *Lo statuto comunale di Fabriano* (1415), pp. 126–7. ⁴² *Decreta Sabaudie ducalia*, fol. 4.

⁴³ *Statuta civitatis Verone*, III, 28. ⁴⁴ *Lo statuto di Bergamo del 1331*, p. 130.

⁴⁵ *Statuto di Deruta in volgare dell'anno 1465*, pp. 199–200.

⁴⁶ *Statuta patavina*, fol. 103v (1276); *Statutum lucani comunis an. 1308*, p. 199; *Statuta floride et alme civitatis Cesene*, clause 34.

⁴⁷ ASLu, Podestà di Lucca, 5042, 6 Sept.; 5043, fol. 28; ASBo, Curia del Podestà, Inquisitiones, busta 330, reg. 1, fol. 53.

⁴⁸ Baldus, *Consilia*, vol. 3, *consilium* 466.

More serious, though, was 'Potta della Vergine Maria' ('By the Virgin Mary's cunt'): uttered for example by a man apprehended at night in the street; by a man in a tavern when his dice-partner refused to play with him any more; or by a Christian convert and vagabond in a hostel in Bologna ('Potta della Vergine Maria, leave me in peace this evening!').⁴⁹

Though insult was often a substitute for physical injury, it could also provoke assault: and though this might be calculated, it could plausibly be presented as a legitimate response. One such case is found among the legal opinions of Paulus de Castro; this was a *consilium* for the defence before the Podestà of Mantua.⁵⁰ The facts were these. A man had been told that his wife was having an affair. So one evening he gathered his wife's brothers and lay in wait, in his own house, for the lover to appear. When the lover entered, apparently via the window, it was he who struck the first blow, hitting the husband with a stick, but he was then killed with a blow from a billhook. Paulus de Castro was asked whether the husband and his accomplices should suffer the death penalty. The key to the question, for Paulus, was whether there was any malicious intent (*dolus*). Paulus exculpates the husband and his supporters: they had gathered not to attack, but to defend; they had no plan to kill, only to administer a beating; when the fatal blows were struck, it happened on impulse and without thinking ('ex impetu et indeliberate'). Instead, the lover was to blame: he entered the house at night 'like a thief', not using the door; and he provoked the killer by repeatedly insulting the sexual honour of his wife. So, the victim gave his attackers cause, excusing them from *dolus*. That cause lay in the insults he uttered, for

according to popular opinion, great shame could follow from this, because those men who do not take revenge with their own hands, but wait to be avenged by the judge, are considered base and cowardly (*cornuti*). But even judges do not usually do justice in such cases, but they scoff and laugh. So the husband had good cause for not going to the judge, but rebuffing the insult on his own authority.

The attackers did nothing wrong 'according to the common man and to popular opinion'. Rather the contrary, as no one hearing of this considers it either shameful or contrary to 'bonos mores'; indeed, it would have been shameful had they done nothing.

What is significant about this *consilium* is that Paulus argues for the exculpating power of those insults that questioned wives' sexual fidelity

⁴⁹ ASLu, Podestà di Lucca, 5386, fols 23, 91, 94; 5283, fol. 150; Capitano del Contado, 95, fol. 8; ASBo, Curia del Podestà, Inquisitiones, busta 330, reg. 1, fol. 53.

⁵⁰ Paulus de Castro, *Consilia, consilium* 192. There is an interesting similarity between this case and the killing of Eratosthenes: C. Carey, *Trials from Classical Athens* (London, 1997), pp. 27–35.

(saying 'Your wife's a whore'). Such insults provoked a violence that overcame the barriers of self-control and rationality ('ex impetu et indeliberate'). And popular opinion, shared by judges, regarded it as proper and honourable for men so provoked to take their own revenge; it was dishonourable to take such insults to court. We have to remember, however, that this is a piece of pleading, not an objective statement of fact. This *consilium* looks very much like one produced for the defence, not an impartial consideration of the case for the judge. We do not know whether Paulus' arguments were accepted. It could be argued that Paulus shelters behind 'popular opinion' because the rest of his case is weak.

Here, however, his assertions are a useful entrée to the world of the 'infra-judicial', forms of popular punishment and informal justice. In one sense insult, though penalised, was itself a form of informal justice: it attempted to strip recipients of their good name and could express the verdict of local communities on undesirable behaviour. Blasphemies called on God to strike opponents with disease or misfortune. But the category of informal punishment was much broader, and included, to borrow Trexler's wording, 'extortions and whippings during charivaris . . . annual festive executions . . . children's inveterate practice of mutilating the cadavers of executed criminals [and] the "torturing" of martyrs in the Quattrocento *sacre rappresentazioni*'. Trexler has insisted on the importance, when developing a view of criminal justice, of taking into account these 'non-governmental manifestations' of an 'ongoing process of defamation of either fleshy or artificial images'.⁵¹ Here the immediate focus will be on door-scorning, charivari (known in Italy as *mattinata*) and revenge, but account should also be taken of boys' mutilation of convicts' corpses (above, pp. 58–9), and husbands' punishment of their adulterous wives (above, pp. 68–9).

Door-scorning involved nocturnal assaults on houses, with rancorous, bawdy songs, the kicking or breaking down of the door, the throwing of stones, ink or blood at doors or windows, the smearing of doorways with mud or excrement, and the sketching of horns and phalluses.⁵² Cohen found that in early modern Rome, this was inflicted mainly on the houses of prostitutes, as a form of private revenge. I have argued elsewhere that this configuration of the practice does not fit the evidence from late medieval Bologna, where door-scorning looks much more like popular punishment for sexual misconduct (adultery, cuckoldry, wife-selling). The greater breadth of targets in the fifteenth century is confirmed by an account from Siena of a man being decapitated for painting a phallus on the door of a member

⁵¹ R. C. Trexler, *Speculum*, 61 (1986), p. 644 (review of Edgerton, *Pictures and Punishment*).

⁵² E. S. Cohen, 'Honor and gender in the streets in early modern Rome', *Journal of Interdisciplinary History*, 22 (1992); Dean, 'Gender and insult', pp. 227–9.

of the government.⁵³ Door-scorning was an enactment of verbal insult, a translation into visual and sonic forms of the defilement that verbal insult sought to effect. Both forms sought to spread dirt, one literally, the other figuratively.

Door-scorning thus shades into charivari in which rough music, performed with basins, bells and horns, marked remarriages by the old or widowed, or in which the wedding procession was impeded and gifts were demanded for passage.⁵⁴ According to Klapisch-Zuber, *mattinata* was criminalised in the later fourteenth and fifteenth centuries; where once it had been a carnivalesque celebration, accepted in good spirit by the recipients, it came to be seen by lawmakers as an insulting disturbance, instigated by jealousy and revenge, generating scandals and brawls, and no longer excused by its antiquity as a custom.⁵⁵ It shares this trajectory with door-scorning, prosecutions for which quicken from the later years of the fourteenth century – ahead indeed of the law in some places, which came to criminalise this practice only in the mid-fifteenth.⁵⁶ Did other forms of the ‘infrajudicial’ share this evolution towards criminalisation and control?

A comparative approach to the laws on insult shows the difficulty legislators had in dealing with the profusion of insults and blasphemies, and in categorising and evaluating them. Some statutes adopt a restrictive definition, others list specific words and phrases, and a few broaden their scope to include any words uttered with a defamatory intent. However, between blasphemy and insult there was a clear evolution in the later Middle Ages: first, in the increasing severity of the legislation on blasphemy (alarm at the nature of the offence; heavier penalty); secondly, in the gradual fading of insult prosecutions from the courts (see above, p. 38). There was a corresponding evolution in governments’ attitudes to informal punishments such as door-scorning and rough music: the perceived damage to public order justified more restrictive laws and penalisation. The interests of public security came to prevail in both cases over the reparation of individual honour.

REVENGE

The inclusion of revenge here needs some justification. First, there is the connection with insult, as suggested in the *consilium* examined above: some

⁵³ *Cronache senesi*, p. 777.

⁵⁴ C. Klapisch-Zuber, ‘The medieval Italian *mattinata*’, *Journal of Family History*, 5 (1980).

⁵⁵ *Ibid.*, pp. 9–10.

⁵⁶ Dean, ‘Gender and insult in an Italian city’, p. 229. But cf. *Statuto di Arezzo* (1327), p. 229, a clause penalising the placing of ‘flesh, bones or filth’ outside anyone’s house at night.

insults were of a kind that could be avenged directly, and not taken to court. Then there is the contemporary perception that at least one type of informal justice – *mattinata* – was motivated by revenge. Thirdly, the type of incident that triggered cycles of revenge seems to owe much to insult, dishonour and shame.⁵⁷

Andrea Zorzi, one of the leading historians of Italian medieval crime and justice, has argued for the existence of a ‘culture of vengeance’ in Italy between the thirteenth and the fifteenth centuries.⁵⁸ He proposes four main aspects of this culture: a language of conflict that was dominated by notions of friendship and enmity; a positive value attributed to vengeance by almost all the great thinkers; vengeance having a central place in works of civic education; and feuds (*faida*) not just as expressions of personal hatred, but as mechanisms to protect family honour.

However, this view from Florence does not fully take account of significant differences in law and practice across Italy. Against the Florentine assumption of kin ownership of revenge – that injuries to one member of a family belonged to all the kin; that vendetta was an obligation on kinsmen, transmitted down the generations – I have pointed to the frequency of individual revenge, pursued without reference to kin.⁵⁹ Against the view, again based on the Florentine experience, that vendetta was respected by the law and the law-courts, I have argued that in some other cities vendetta was criminalised, and that there are examples of prosecutions and penalties for revenge attacks.⁶⁰ Against frequent use by historians of the term ‘faida’, I have observed that there is no word corresponding to ‘feud’ or ‘blood-feud’, and that medieval writers instead use the terms ‘enmity’, ‘hatred’ or ‘war’ (*inimicitia*, *odium*, *guerra*). It is important to pay attention to the vocabulary of revenge, so as to avoid imposing our ideas of revenge on to people in the past. Andrea Zorzi runs this risk in his use of the word *faida*, by which he means feuding. This word was rarely, if ever, used by medieval writers, and seems to have been picked out from early medieval law-codes and applied to communal Italy by writers in the eighteenth and nineteenth centuries.⁶¹ ‘Feud’ and ‘blood feud’ are over-determined as categories; ‘hatred’, ‘enmity’, ‘war’ are not. And it is the latter terms that contemporaries used.

⁵⁷ T. Dean, ‘Marriage and mutilation: vendetta in late-medieval Italy’, *Past & Present*, 157 (1997).

⁵⁸ Zorzi, ‘Conflits et pratiques infrajudiciaires’, esp. pp. 23–4.

⁵⁹ ‘Marriage and mutilation’, pp. 15, 19.

⁶⁰ T. Dean, ‘Violence, vendetta and peacemaking in late medieval Bologna’, *Criminal Justice History*, 17 (2002), pp. 4–5.

⁶¹ S. Battaglia, *Grande dizionario della lingua italiana* (31 vols., Turin, 1961–2002); Du Cange, *Glossarium mediae et infimae Latinitatis* (7 vols, Paris, 1840–50). The only late medieval writer I have found using this word is the jurist Angelus de Ubaldis (*consilia* 67 and 289) and he uses it in such a way ([e]levare faidam) as to indicate his source, namely Lombard law.

In investigating the relation between the law and revenge, we might start with some simple questions. Was there a conceptual difference between punishment and revenge? What space was allowed to revenge in the criminal justice system? Did the judge see himself as avenging wrongs? In the thirteenth century, laws do refer to punishment as 'vindicta' (often as 'vindicta sanguinis').⁶² What we would call public execution was thus conceived of as revenge, albeit imposed by the authorities, not performed by the victim: 'public revenge', in Gandino's phrase, in tacit opposition to 'private revenge'.⁶³ This accords with the general character of the vocabulary in thirteenth-century criminal law, which is that of composition: if so-and-so commits this or that offence, such a sum of money 'will be taken from him', or he will 'compose' for the offence. Where the death penalty is prescribed – as, for example, for homicide – the offence can usually be 'concorded' with the victim's heirs.⁶⁴ But from early in the fourteenth century, legal vocabulary changes: now the offender is 'to be punished', or 'condemned'; execution is now 'capital punishment'; and concord is declared to be of no avail ('pax non prosit').⁶⁵ The distinction between revenge and punishment is then consolidated in judicial practice, in legal learning, and in government policy. In judicial practice, revenge is not a word uttered in the court-room as excuse or justification for wounding or homicide.⁶⁶ In legal learning, striking back in the heat of the moment is acceptable; plotting vengeance is not (see below, p. 126). In their policy and action, governments drew clear lines between justice and revenge. For example, in an episode of cross-border fighting between two family groups, the Bolognese government resisted calls to cancel trials for homicide during peace negotiations, because of the importance of setting an example. If, the government wrote, our subjects see that 'justice does not take its course, they could easily become angry and set to taking revenge (*vendecta*) for the injuries done to them, as it would seem to them legitimate to inflict with their own hands some deplorable punishment ('qualche rencrescivole punitione'), in place of that which belongs to the Podestà'.⁶⁷ It might be argued that

⁶² *Statuti del comune di Vicenza MCCLXIV*, p. 119; *Statuta communis Parmae ab anno MCCLXVI ad annum circiter MCCCIV*, pp. 246 ('vendicta et justicia'), 280. Zorzi misreads the latter reference as a legal restriction of vendetta, but the full text clearly refers to official justice performed by the Podestà: Zorzi, 'Conflits et pratiques infrajudiciaires', p. 25.

⁶³ Kantorowicz, *Albertus Gandinus*, vol. 2, p. 145.

⁶⁴ A good example: *Statuti del comune di Vicenza MCCLXIV*, pp. 117–18.

⁶⁵ *Statuta civitatis Mutine anno 1327 reformata*, pp. 379–80; *Lo statuto di Bergamo del 1331*, p. 171; *Statuta patavina*, fol. 101v (1339). On the transition, see Dezza, 'Gli statuti di Tortona', pp. 409–13; Pertile, *Storia del diritto italiano*, vol. 5, pp. 574–7.

⁶⁶ M. Bellabarba, *La giustizia ai confini: il principato vescovile di Trento agli inizi dell'età moderna* (Bologna, 1996), p. 101.

⁶⁷ ASBo, Comune, Governo Lettere del comune, reg. 5, fols. 90–v, 93 (17 Dec. 1492, 18 Jan. 1493).

even here there is a continuing overlap in meaning between punishment and vengeance (the families think they are inflicting 'punishment'), but the effort to distinguish between them is stronger: self-administered punishment has only the *appearance* of legitimacy; the role of justice is to keep at bay the anger that fuels revenge, not to perform revenge; punishment belongs to the judge.

In order further to examine these themes – the relation between vendetta, on the one hand, and kin, penal law and 'feud', on the other – I shall review four different sources: *consilia*, statute law, trial records and chronicles. Those who argue for the widespread legitimation of vendetta often point to a passage from the famous jurist Baldus as showing that even Roman lawyers acknowledged the culture of vengeance.⁶⁸ The passage in question reads as follows:

by the custom of certain places, such as in the city of Florence, it is regarded as revenge when all members of the family of the injured party take up arms, because their custom is to take revenge . . . for an injury done to one 'discolours' the whole family.⁶⁹

However, this quotation is often taken out of its context, and it is worth reconsidering its place in Baldus' argument in this *consilium*. First, though, some of the complexity of learned lawyers' relation to vendetta can be shown in the *consilia* of other jurists. This complexity arises regarding two problems: 'What is the relation between self-defence and revenge?' and 'What is the relation between the pacification of old injuries and the infliction of new ones between the same families?'

Consultants were sometimes asked to advise on cases where actions taken in self-defence seemed to have been excessive and to have turned into revenge. The question then was whether the law of self-defence excused such actions. Tartagni considers the case of a man who had been dragged into the river Po, where he was held by the hair, and who killed his aggressor with a sword.⁷⁰ Tartagni argues that this was self-defence, not revenge, despite the disproportion between injury and response, partly because the victim could not fend off further injury in any other way, and partly because the response was made 'immediately and in the same fight'. The issue of

⁶⁸ G. Mauguin, *Mœurs italiennes de la Renaissance: la vengeance* (Paris, 1935), p. 118; J. Heers, *Le clan familial au Moyen Age* (Paris, 1974), p. 118, citing Tamassia; Bellabarba, *La giustizia ai confini*, p. 50, n. 75.

⁶⁹ Baldus, *Consilia*, vol. 3, *consilium* 173.

⁷⁰ Tartagni, *Consilia, consilium* 76. For earlier treatment of the general point, see Kantorowicz, *Albertus Gandinus*, vol. 2, pp. 61–2, 178 (blows dealt in revenge, not self-defence, are to be punished). In general, Pertile, *Storia del diritto italiano*, vol. 5, pp. 112–15.

what constitutes 'the same fight' is an important one. The Veronese jurist Cepolla had to advise on the case of one Francesco who issued threats to Antonio as the latter rode off towards Brescia – 'Go on your way. In less than three hours I shall be in Brescia and will pay you back' – and who killed him in a subsequent fight.⁷¹ Cepolla concedes that this seems to be vendetta, until the account is rewound to another starting point – one in which Antonio, encountering Francesco in the roadway, provoked him, telling him 'Move aside and get out of my way!' and threw stones at him. When Francesco responded with his threat, Antonio drew a sword and challenged Francesco to a fight. Here the greater strength and aggressiveness of Antonio made it impossible for Francesco to defend himself in any other way than by killing. The important point is that whether a wounding attack is perceived as self-defence or revenge depends on the starting point of the narration.

The starting point for narration of injuries, for connecting one set of injuries to another, is also an issue in juristic discussion of pacification and the breaking of peace. Signorolus de Homodeis was consulted regarding a case before the Podestà of Como.⁷² Gabriele da Sasso and Pietro dal Pozzo had made peace in 1335 for all injuries exchanged between themselves and their brothers, agnates, cognates and in-laws. Some years later (either 1348 or 1358), Pietro and his sons disturbed Gabriele's son in his possession of some property. Did this constitute a violation of the peace between the families? No, says Signorolo, first because the pacification of 1335 was limited to past injuries, and secondly because the new incident cannot be related to them. 'Because of the interval of time, we can say correctly that these [new] excesses do not depend on, originate in or draw occasion from the old, past offences', the memory of which is 'obliterated' by the passage of time. The Roman jurist Pontano uses similar argument in similar cases revolving around the question whether a private pacification was broken by an offence committed out of a 'new, subsequent cause', or 'out of the old cause of enmity'. So, for example, adultery with an old adversary's wife or theft from an old adversary's forest cannot be connected to a preceding conflict between two families: 'neither adultery nor theft is a cause for avenging or reviving an enmity that has been put to sleep'.⁷³ Lawyers thus refused to recognise feud. Their concept of 'the same fight' allowed them to trace the origin of violence back to its antecedent provocation, but was

⁷¹ *Consilia criminalia celeberrimi ac prestantissimi utriusque juris illuminatoris domini Bartholomei Cepole Veronensis* (1531), *consilium* 29.

⁷² *Consilia Signoroli de Homodeis, consilium* 5.

⁷³ Ludovicus [de Pontanis] de Roma, *Consilia, consilia* 183 and 257.

not elastic enough to bind together episodes separated by years or by a peace-treaty.

This is the context in which I want to reconsider the *consilium* of Baldus: whether and how jurists allowed episodes of violence to be connected as revenge or feud. The case that gave rise to his *consilium* arose in the city of Chieri, in the territory of the count of Savoy. There, an association called the 'Society of St George' had a rule that stipulated that if anyone from a list of named families struck any member of that Society, the assailant would lose his membership. (This was a society of the *popolo*, protecting itself against the noblemen in its midst).⁷⁴ If the victim wanted to take revenge, the Society would help him, but within a month of any revenge being 'suitably' taken peace was to be made, and anyone who refused to make peace would be expelled. The following sequence of events then happened: a member of the Society was wounded by one of the Merlenghini family; after an interval of time, he in turn wounded a member of the Merlenghini who had been in France at the time of the first assault. The rector of the Society ordered the Merlenghini to make peace, or to face expulsion. They refused, on the grounds that this was not revenge, but a 'new war', and that the other members of their family were not involved and should not suffer expulsion. The victim thus wanted to connect episodes in order to force the expulsion of all the Merlenghini; the Merlenghini rejected this view of events, and saw the two episodes as isolated, separate incidents. (Analogous here is the jockeying for the moral high ground, that of the victim, which took place before a duel). It is at this point that Baldus makes his remark about Florentine families responding as solid groups to any injury. That remark is immediately followed by a statement of the inapplicability of Florentine custom to the case in hand: 'but by common law this is not vendetta, but a new fight (*nova rixa*)'. And on this basis, Baldus recommends that only the one assailant, not the whole Merlenghini family, should be expelled from the Society.

Almost all of the other statements by jurists apparently in support of vengeance address one particular circumstance: the killing of bandits. (The only exception concerns a different sort of public enemy, the enemy soldier).⁷⁵ For Bartolus, the impunity of bandit-killing has regard to both public utility (that a province be purged of malefactors) and private utility (that a victim take revenge on his enemy).⁷⁶ Angelus de Ubaldis advised

⁷⁴ L. Cibrario, *Delle istorie di Chieri libri quattro* (2 vols., Turin, 1827), vol. 1, pp. 148–9, 220–54, esp. pp. 234, 240–2 for material on assisting revenge.

⁷⁵ Paulus de Castro, *Consilia, consilium* 193. ⁷⁶ *Consilia questiones et tractatus Bartoli, quaestio* 1.

on the question whether a bandit released from the ban by a Florentine governmental commission in 1378 could be killed in revenge by the kin of his victim (no, he could not, was his opinion).⁷⁷ Paulus de Castro dealt with two cases in which men charged with homicide defended revenge killings on the grounds that the victim was a bandit.⁷⁸ Paulus, while defending one of these killings as both 'execution of public punishment (*vindicta*)' and revenge of private injury, concedes that exceeding equivalent revenge ('competentem vindictam') could be punished. Ludovicus de Bologninis quoted an earlier jurist on the same point: 'exceeding the due measure (*modum*) in revenge is to be punished' (though for *culpa*, not *dolus*).⁷⁹

To sum up: jurists did not legitimate feud or vendetta. On the contrary, they were hostile to the narrative mode of vengeance in which an exchange of violence could be reckoned over many years, and in which feud could never be ended because memory of old injuries could not be 'put to sleep'. Their notions of a 'new fight' and the 'same fight' broke potential feuds up into constituent episodes, each of which was traced to its specific antecedent causes. Where they do allow revenge, in the case of bandits, private vengeance is mixed with public punishment, and is limited by a sense of 'appropriateness'.

This containment of vendetta was also the aim of much statute law on revenge. Broadly speaking, statutes sought to contain the exchange of injuries to the aggressor and the victim, and so to penalise the taking of revenge against any of the aggressor's kin. Such secondary vendetta was, according to many statutes, to be punished with death if it involved killing, or with double, treble or quadruple penalties if it involved other injuries. But some statutes went further. In Camerino and Spoleto, primary vendetta against the 'principal aggressor' was to be punished with the ordinary penalty for such crime.⁸⁰ In Reggio self-defence with any weapons was legal, provided that action was in defence and not in revenge.⁸¹ In Perugia, taking revenge against anyone not subject to the Podestà's jurisdiction (that usually means clerics) was to be punished with a fine.⁸² In Cesena, after condemnation by the courts no further action was to be taken against a miscreant in revenge.⁸³ In Palermo, 'normally no one may

⁷⁷ Angelus de Ubaldis, *Consilia*, *consilium* 256. ⁷⁸ Paulus de Castro, *Consilia*, *consilia* 33, 194.

⁷⁹ *Consilia domini Benedicti Caprae et Ludovici de Bologninis*, *consilium* 63.

⁸⁰ Dean, 'Marriage and mutilation', pp. 8–9.

⁸¹ *Consuetudini e statuti Reggiani del secolo XIII*, ed. A. Cerlini (Milan, 1933), p. 29.

⁸² *Statuti di Perugia dell'anno MCCCXLII*, vol. 2, p. 104.

⁸³ *Statuta floride et alme civitatis Cesene*, clause 87.

avenge themselves on their own authority, but should prosecute their case in the ordinary courts'.⁸⁴ So it is not accurate to say that the law did not prohibit or prosecute vengeance.

That revenge was prosecuted is shown in the trial records. I have given some examples of this in a previous publication.⁸⁵ Here are some more. Looking just at Lucca and Bologna, we can find prosecutions and convictions in four different situations. The first is the threat to take revenge. A Lucchese citizen accused a former tenant of issuing threats to kill him, couched in terms of revenge for failing to pay him his due.⁸⁶ In Bologna, a dyer was fined for using threats of revenge in an imbroglio in 1403: he joined a band of boys shouting political slogans outside the house of Tarlato Beccadelli, and when Tarlato reproved him, he turned towards a noblewoman on the other side of the street and said 'If I can't take my revenge against your men-folk who wish to do me wrong, I shall take my revenge on you, and cut out your guts.'⁸⁷ The second type of prosecution occurred when outsiders to a quarrel took revenge on one of the protagonists or were recruited to a revenge-seeking group. The former is seen in a case in Bologna in 1345, in which the avengers were executed; the latter in a case in 1392, when Pietro da Corvaria, known as 'Wicked', was drawn into a revenge killing by a promise of clothing, protection and money.⁸⁸ The third situation was escalation, excess in taking revenge, even against the first aggressor (which the statutes implicitly allowed). Battista, considering himself offended and insulted by his brother, took revenge by killing him with one fatal stab in the back. For this he was decapitated.⁸⁹ A peasant of Pontecchio explicitly took revenge on a man who had damaged his dovecot by setting fire to his house.⁹⁰ In Lucca, an appeal to revenge was the origin of the killing of Lazzaro Guinigi by his brother and Niccolò Sbarra: 'Will you join me in killing my brother Lazzaro?' Antonio Guinigi said to Niccolò, 'for I firmly intend to kill him, given that he has made me so many insupportable insults . . . and does not treat me as a brother, but as his enemy. And you, Niccolò, should agree to this, as you know that Lazzaro was the cause of your uncle's death.'⁹¹ Both Niccolò and Antonio were beheaded for this killing.⁹² Finally, making false allegations in order to achieve revenge via the law-courts was also

⁸⁴ V. La Mantia, *Antiche consuetudini delle città di Sicilia* (Palermo, 1900), p. 180.

⁸⁵ Dean, 'Violence, vendetta and peacemaking in late medieval Bologna', pp. 4–5.

⁸⁶ ASLu, Podestà di Lucca, 5042, 14 Dec. 1385.

⁸⁷ ASBo, Curia del Podestà, Inquisitiones, busta 283, reg. 1, fols. 10–v.

⁸⁸ Ibid., busta 162, reg. 3, fol. 16; busta 262, reg. 1, fol. 68.

⁸⁹ Ibid., busta 327, fol. 89 (1427). ⁹⁰ Ibid., busta 185, reg. 6, fol. 80 (1357).

⁹¹ ASLu, Podestà di Lucca, 5111, fols 34–v (1400).

⁹² *Le croniche di Giovanni Sercambi*, ed. Bongi, vol. 2, pp. 405–10.

prosecuted and punished. An example from fifteenth-century Bologna: the 'partners and partisans' of Benincasa da Tossignano had killed a kinsman of a *contadino* called Benedetto. Benedetto informed the Podestà of Bologna that Benincasa was plotting against the city's regime, and hoped through this vengeful calumny to bring about Benincasa's death.⁹³

Legal and judicial sources clearly restrict, deny or contain revenge. The same is not, however, true of narrative sources. At one level, it might be said that these appear to be filled with stories of revenge, or at least with narrative fragments in which revenge is explicitly named as a motive (see above, p. 67). Here is just one example from Perugia, concerning a noble family. One evening in June 1442 on the city piazza, an illegitimate son of Tancredo Ranieri aimed a punch at Borgaruccio Ranieri's face, but caught only his hat, knocking it off. Borgaruccio drew a dagger, and his attacker ran off. The following evening Tancredo had words with Borgaruccio on the piazza, and ended by calling him a bastard, at which Borgaruccio pushed him hard so that he fell down. Borgaruccio then drew a knife, but bystanders intervened to prevent any injury. Borgaruccio was promptly banished by the Podestà. Twenty months later, Tancredo organised an armed ambush by his illegitimate son and some servants and supporters, outside the house of his kinsman Bartolomeo. In this attack, Bartolomeo's bastard brother was killed. The judge took action against the perpetrators, who all fled to the countryside, soon to be followed by Tancredo. After a few months, however, Tancredo returned, visited the governing authorities, arranged peace with his enemies, and appeared in public without any restriction. The following year, April 1445, Tancredo was killed by Bartolomeo, Borgaruccio and Niccolò Ranieri, because of the earlier killing. The Podestà went to Bartolomeo's house, and made a symbolic, punitive act of seizing all his belongings, and burning them in the piazza.⁹⁴

This account has many features that are common to accounts of vendetta. A cycle of revenge is presented as starting with the hot-headed action of a youth, significantly a bastard. Youths are often found triggering vendettas or reviving family memories of old injuries. The relation of illegitimate males to their parent family was such as to provoke and inflame conflict.⁹⁵ The exchange of violence mixes immediate and delayed responses ('same fights' and 'new fights'), but it is always marked by disproportion. The quarrel ascends the family hierarchy, the exchange of violence escalates, and more men participate both from the family and from its clientele.

⁹³ ASBo, Curia del Podestà, Inquisitiones, busta 285, reg. 3, fols 31–v (1404).

⁹⁴ 'Cronaca della città di Perugia dal 1309 al 1491', ed. Fabretti, pp. 480–1, 546, 556, 568.

⁹⁵ Kuehn, *Illegitimacy in Renaissance Florence*, pp. 88–92, 105–6, 151, 185.

Tancredo seems to act with impunity. However, though judges or pacifiers do not seem to end the enmity, they do intervene, and at every stage of the conflict, from its beginning on the piazza to its end in Tancredo's death. And the fact that this conflict does end, in the chronicle, with Tancredo's death is significant: vendetta dies with him.

Moreover, chronicle accounts do not always confirm the impunity and semi-legitimacy of vengeance. They blame avengers and stress the innocence of victims. Chroniclers speak out against disproportion or excess in taking revenge. Chronicle narratives use markers of innocence in the same way as petitions for pardon.⁹⁶ They stress the innocence and peaceableness of one party, and the guilt and guile of the other. They present revenge as a violation of sacred time (peace, game-time, Christmas). They describe and deplore the deceptions practised by avengers (secrecy, concealment, connivance of priests). Moreover, chronicles report public responses to those revenges that were regarded as excessive, as too cruel, severe or barbarous. For example, the case in Pistoia of the mutilation in revenge of a youth by distant members of his own family: it was 'considered by everyone to be too cruel and severe a thing, to shed their own family's blood'.⁹⁷

This section proposes a revision of a certain view of the connection between legal and social history. One statement by Baldus has often been taken as typical of legal opinion on the social practice of vengeance: here that statement is put into its immediate context and into the context of other legal opinions to show how jurists did not accept the connectedness of events that 'revenge culture' rested on. Moreover, a comparative approach reveals significant differences in law and judicial practice across northern Italy in the ways that revenge was treated.

⁹⁶ I shall examine this theme more closely in a forthcoming publication.

⁹⁷ T. Dean, *The Towns of Italy in the Later Middle Ages* (Manchester, 2000), pp. 185–6.

Appendix: List of insults as recorded in the sources

- fol. 2: 'turpis tignosse' (said by a male citizen)
fol. 2v: 'quod ipsa menciebatur per gullam turpis femina marcida' (said by a male servant to a married woman)
fol. 3: 'Vade zanzator marcidus deus ponta te in mallo anno', 'Turpis asine merdose quid venitis ad zanzandum hic' (said by two brothers to a third man)
fol. 6v: 'dum e[r]atis ministralis accepistis a me pisces pro tributo' (said by a fisherman to another man)
fol. 7v: 'ite ite ad loquendum cum vestris paribus et meretricibus. Vos non debetis loqui cum bonis feminis' (said by a married woman to another woman)
fol. 9: 'Ego displicio te sicut canis et dabo tibi de pugnis et de calciis super persona'⁹⁸ (said by one man to another)
fol. 15v: 'Brute roffiane marcide' (said by one man to another)
fol. 16: 'Tu es unus diabolus et una brotura ad loquendum tecum' (said by one man to another)
fol. 16v: 'latro et jotone' (said by one man to another)
fol. 18v: 'Cogita expedere domum nisi quod ego expellam te de Saona et sbatebo capud de tuis filiis et frangam tibi costas' (said by one man to a woman)
fol. 23: 'Prospiciatis de isto vituperio' (said by a female servant to a married woman)
fol. 24: 'Per corpus Christi conveniet quod dem tibi taliter super caput quo ego expediam te' (said by one man to another)
fol. 34v: 'rafacius mentecaptus' (said by one man to another)
fol. 31 (bis): 'Fac mihi ad peius quod tu potes' (said by one man to another)
fol. 31 (bis): 'Putana afactureria' (said by one married woman to another)

⁹⁸ I have translated 'displicio te' as 'I hate you', partly because of the grammatical change, from a classical dative ('tibi'), and partly because of the greater force of words of displeasure in this period, often associated with hatred: see Battaglia, *Grande dizionario della lingua italiana*.

- fol. 36: 'quod trincaret ei gullam et quod poneret eidem pedes intus' (said by one man to another)
- fol. 37: 'Bruta xa paca vituperosa tu titeras tibi homines super podicem' (said by one married woman to another)
- fol. 41: 'Facias te fotare' (said by one man to another)
- fol. 41v: 'Judea falsa tu nosis quod sit tibi advenire' (said by an innkeeper's wife to a married woman)
- fol. 41v: 'Lena marcida nos faciemus te expellere de domo' (said by three men to a woman)
- fol. 42v: 'Turpis putana canis' (said by one man to a married woman)
- fol. 43: 'Asinus marcidus robaldus' (said by a fisherman to another man)
- fol. 44v: 'Tu robasti me' (said by a gardener to another man)
- fol. 44v: 'Bruta putana marcida, tu es una putana' (said by an innkeeper to a female servant)
- fol. 46v: 'Conveniet quod ego det [sic: dem?] tibi de digitos inter oculos ut des mihi de manibus super faciem pro quo possem facere tibi solvi lbr 10' (said by one shoemaker to another)
- fol. 51v: 'Ego velle te videre straxinare per terram istam' (said by a weaver's wife to a man)

Sex crimes

In his book *The Boundaries of Eros*, Guido Ruggiero tells a history of increasing government intervention in sexual matters during the Renaissance, in response to the alarming growth of a culture of illicit sexuality.¹ Using the records of several Venetian courts in the period from 1348 to 1500, Ruggiero examines five main sexual crimes, namely fornication, adultery, sacrilegious sex, rape and sodomy. He gives shape to his narrative in three different ways: by examining language, penalties and prosecutions. First, he looks at judicial language, that is, how cases are described and reported in the court records. One aspect of this is the perceived nature and scope of the injury. Here he finds an evolution from a simple concern with damage or dishonour to the father or family of the victim (characteristic of the mid-fourteenth century) to more heightened alarm at contempt for God, law and justice, which grows by stages in the later fourteenth century, and comes to eclipse family honour. The language used regarding some crimes, however, was special: sex with nuns was sacrilegious, as the injured party was God; and sodomy was condemned as likely to provoke God's destructive anger on the city. Another aspect of judicial language is the descriptive vocabulary: Ruggiero contrasts the 'distant and antiseptic' language of heterosexual rape cases with the abundant physical detail of sodomy cases. This contrast is used to suggest the significance attached to each type of offence.

The second feature of Ruggiero's story is the contrast in penalties for sex crimes. Punishments for fornication, adultery and rape are frequently said to be 'mild', in clear contrast to the severity and finality of the death by burning imposed for sodomy. Penalties for fornication and adultery were light because the court's main aim was to encourage the fornicators to marry and to repair the marriages of adulteresses. Penalties for rape were light, either because marriage again was an alternative (the rape of girls of

¹ Ruggiero, *The Boundaries of Eros*.

marriageable age was punished with 'no more than a slap on the wrist') or because of the status difference between upper-class rapist and lower-class victim.

The third element is the expanding range of prosecuted offences and offenders. Sex with servants and slaves was prosecuted 'more aggressively' from the late fourteenth century. Before the 1360s, only the male adulterer was prosecuted; after that time, the woman was too. The earliest trial for sex between Christian and Jew dates to the 1420s. Corporal punishment for rape increased in the fifteenth century. The Council of Ten pursued sodomy cases more vigorously than their predecessors, the Signori di Notte: the number of prosecutions rose, the number of important Venetians tried rose, and sodomy with women was now included.

From this combination of contrasts – in punishments, in judicial language, in the pattern and number of trials – Ruggiero concludes that the government increasingly disciplined sexual matters not for moral reasons, but because they threatened marriage and the family in an age when traditional social controls (of family, peer group and custom) were failing as a result of rapid social, economic and demographic change. But the paradoxical effect of increasing government intervention was to define two distinct sexual milieux – licit (marriage, procreative sex), and illicit (mistresses, prostitutes, rape and adultery) – not for the first time, but in their modern form.

However, Ruggiero's story has some worrying flaws. His repeated definition of penalties of incarceration as 'mild' overlooks the conditions of late medieval prisons, where disease, despair and death overtook many prisoners. In Venice itself, where the prisons were once described as a 'nauseating pit', the stench was at one time so foul that it was thought best to move the prisoners elsewhere.² Nor was forfeiture of dowry – imposed on adulteresses – a 'mild' penalty, as has been pointed out.³ Mistakes made in identifying patricians cast doubt on Ruggiero's arguments regarding crimes that struck either up or down the social hierarchy.⁴ Invoking the collapse of traditional social controls as the motor for increased governmental intervention is inadequate: why should this have happened in the late fourteenth century and not, say, in the thirteenth, when immigration may well have been higher? Just from the number of cases alone – a hundred cases of fornication, fewer than three hundred of adultery, in a period

² Dean, *Crime in Medieval Europe*, pp. 122–3; Pertile, *Storia del diritto italiano*, vol. 5, pp. 279–89.

³ J. Grubb, review, in *American Historical Review*, 94 (1989), pp. 478–9.

⁴ S. Chojnacki, review, in *Renaissance Quarterly*, 39 (1986), pp. 288–91.

of 150 years – it might be inferred that informal controls were healthy.⁵ ‘Rapid’ social and economic change cannot, in any case, apply to the whole period. Moreover, Ruggiero’s dismissal of moral concerns as the main rationale for intervention overlooks the impact of preaching on the Venetian government.⁶ These are, however, fairly minor criticisms, focusing on his characterisation of penalties and his explanation of change. Most criticism has been directed at Ruggiero’s attempt to construct a ‘culture of illicit sexuality’. Beyond identifying a group who broke the law, he does not define that culture in terms of values, attitudes or identities.⁷ Alan Bray observed that it looks more like a culture marked by drinking and gambling, in which other crimes found a place.⁸ More tellingly, it has been argued that Ruggiero used material relating to one pair of opposites (legal/illegal) as evidence for another (licit/illicit).⁹

One further comment: the category of sex crimes might seem fairly obvious to us, but it is no less problematic than ‘violence’ or ‘theft’ (on which, see below, p. 185). One problem is the fact that the modern words do not have the same meaning as their medieval Italian equivalents; another is that the definition of those Italian words was not agreed at the time.¹⁰ We may put together the crimes of fornication, adultery, rape, prostitution and sodomy, but in late medieval law they are largely kept apart, both literally and conceptually: literally in that they are not gathered together in one sequence in the statute books, conceptually in that they are seen as different kinds of offence. Sodomy was long bracketed with heresy, and even when it broke free, it retained an exceptionally strong religious definition. Prostitution itself was not a crime, and the offences that prostitutes committed – tout-ing for business in prohibited areas, failing to wear distinguishing signs – were often regulated in those parts of the statute-books that dealt with urban hygiene. Secular law concerned itself with fornication only when it injured the rights of slave-owners and patriarchs over their servants and daughters. Rape could be a crime both against a woman and against her father, while adultery was a crime against the husband: the former was in one respect more akin to theft, the latter to insult (in causing shame and dishonour).

⁵ H. Butters, review, in *English Historical Review*, 102 (1987), p. 963.

⁶ O. M. T. Logan, review, in *Times Literary Supplement*, 23 Aug. 1985, p. 921; J. Grubb, review, pp. 478–9; S. Chojnacki, review, in *Salmagundi*, 72 (1986), p. 284.

⁷ H. Butters, review, p. 962; T. M. Saffley, review, in *Sixteenth Century Journal*, 18 (1987), pp. 433–4.

⁸ A. Bray, review, in *Journal of Homosexuality*, 16 (1988), p. 501.

⁹ Chojnacki, in *Salmagundi*, p. 284.

¹⁰ N. Davidson, ‘Theology, nature and the law: sexual sin and sexual crime in Italy from the fourteenth to the seventeenth century’, in *Crime, Society and the Law in Renaissance Italy*, ed. T. Dean and K. J. P. Lowe (Cambridge, 1994), pp. 75–6.

Despite these criticisms, much of Ruggiero's basic empirical findings remains: the number and range of sex crimes prosecuted grew between the middle of the fourteenth and the late fifteenth century. And this has been corroborated by research in other cities. Historians agree in seeing an increasingly coercive social discipline being enforced in these centuries, and the most striking example is the repression of sexual deviance.¹¹ The preaching of Observant friars such as San Bernardino stimulated the disciplining of everyday life, in areas such as gambling and blasphemy.¹² What is still needed, however, is a broader survey of law and judicial practice in this prominent area.

ADULTERY AND RAPE¹³

Statutes in the thirteenth century were largely silent on adultery: they were concerned mostly with rape, and it was sexual violence that drew the attention of judges.¹⁴ However, in the early fourteenth, laws on adultery evolved quickly, imposing financial penalties first on the man, then also on the woman (fine and loss of dowry). From the middle of the fourteenth century, more severe, corporal penalties were introduced for the woman, ranging from shaving and whipping to death. Boccaccio's story in the *Decameron* (VI.7), in which the city of Prato abolishes the death penalty for a wife's adultery in response to clever pleading by one adulteress, runs entirely counter to the historical trend, but may, of course, have been received as a fictional discussion of the appropriateness of this penalty.¹⁵ Conversely, for a husband who kept a mistress (*amasia*), the financial penalty was set much lower, and corporal penalty was rarer. The double standard of these laws is at once obvious: the penalties for the married woman guilty of engaging in extra-marital sex became increasingly severe, while those for the married man were lighter and stable.

¹¹ A. Barbero, 'Gruppi e rapporti sociali', in *Storia di Torino*, vol. 2, *Il basso Medioevo e la prima età moderna (1280–1536)*, ed. R. Comba (Turin, 1977), p. 190; Cohn, 'Sex and violence on the periphery'; R. Comba, 'Apetitus libidinis coherceatur'. Strutture demografiche, reati sessuali e disciplina dei comportamenti nel Piemonte tardo-medioevale', *Studi storici*, 27:3 (1986), pp. 549–51, 572–3.

¹² V. I. Comparato, 'Il controllo del *contado* a Perugia nella prima metà del Quattrocento: capitani, vicari e contadini tra 1428 e 1450', in *Forme e tecniche del potere nella città (secoli XIV–XVII)* (Perugia, 1980), p. 178.

¹³ The first three paragraphs of this section re-work the text of my 'Fathers and daughters: marriage laws and marriage disputes in Bologna and Italy, 1200–1500', *Marriage in Italy*, pp. 86–9, to which readers are referred for the supporting bibliography.

¹⁴ Comba, 'Apetitus libidinis coherceatur', pp. 543–8.

¹⁵ The penalty was retained only for cases where the wife took money for sex.

Rape is dealt with much less straightforwardly by many statutes. Often it appears in catch-all clauses, misleadingly titled 'de adulteriis', regarding a variety of sexual offences with virgins, wives and widows. The words used in these statutes do not always mean 'rape' in the modern sense: the Latin word *raptus* meant abduction or theft, while *stuprum* cannot securely be translated as 'rape' either, in the sense of violent sex without consent, given that some statutes speak of *stuprum* with consent. This uncertainty reproduced an ambiguity in Roman law: the Digest (48.5.6) admitted that the terms *stuprum* and *adulterium* were used 'promiscuously', and that 'properly speaking adultery is committed with a married woman, *stuprum* on a virgin or widow'. Baldus too, in a *consilium*, had to explain the difference between adultery and *raptus*: 'to rape is to drag from place to place with force' (note the similarity with definitions of theft: below, p. 185). Where the modern category 'rape' differs from this medieval category is first in no longer taking account of the marital status of the victim, and secondly in losing the sense of movement or abduction. By contrast, Italian city statutes on rape and adultery usually comprise a number of elements – abduction, the use of force, sexual violation, the possibility of consent, the status of the woman – which were presented in various combinations, each with a distinct penalty.

Laws on rape/abduction followed the same path towards severity taken by other sex crimes. The earlier laws provided only financial penalties (often much lighter if the victim was a lower-class woman or a prostitute). Those after the mid-fourteenth century provided a much graver penalty (death). In this evolution, it might be tempting to see the city legislators bringing their statutes into line with Roman law, which prescribed death for *raptores*, but in fact civic statutes tempered the severity of Roman law. Almost invariably, those that ordained capital punishment for abduction also allowed an alternative: if both the 'rapist' and his victim were unmarried, and if the victim consented, he could marry her, provide her with a dowry, and thus avoid other penalty. The stricter Roman-law rule, that such marriage was impossible, was thus set aside in favour of the canon-law rule, inspired by the Bible, that the rapist/seducer should marry his victim and/or grant her a dowry. There are two ways to understand this rather oppressive option. Ruggiero would lead us to think that 'normal' sexuality was in any case violent,¹⁶ so that the distinction between this path to marriage and any other becomes less stark. Or it might be argued that the figure of the rapist was an ambiguous one, and abduction might have been consented to by the

¹⁶ *Boundaries of Eros*, pp. 31–2.

woman as a prelude to marriage: if many abductions were in fact elopements, then matrimony was the objective from the start, and the law merely had the effect of transferring the obligation to provide a dowry from the father to the 'abductor'. This argument, however, may be countered by feminist historians, who would see it as blurring 'the legitimization of male force in socially approved relations between men and women', or as 'sanitizing' sexual violence.¹⁷

Adultery was much more frequently prosecuted than rape. The total numbers of cases from three decades in the Bolognese records bear this out.¹⁸ For example, in the 1390s there were eighteen prosecutions for adultery or keeping a married woman as a mistress (*amasia*), and only five prosecutions for rape.¹⁹ Attempted rape was prosecuted at roughly equal rates as actual rape: three of those five prosecutions were for attempts, not completed acts. A similar proportion is found in Lucca (again, though, the total number of cases is small).²⁰ There are significant variations in the character and status of the actors and the victims. In the five Bolognese cases from the 1390s, rape was attempted by outsiders, either those labelled as vagabonds, or foreigners, with no abode in Bologna – men from Florence, Pavia, Pistoia – and was prevented by the woman's resistance and the intervention of neighbours or husbands. By contrast, both instances of completed rape occurred in the *contado*, once when a peasant seized a girl shepherding her father's animals, and again when a Slavonic migrant deflowered an unmarried woman. In the previous decade, similarly, both of the two prosecuted rapes occurred in the *contado*, one being committed by a foreign bandit-leader.²¹ Adultery, by contrast, happens (in the judicial record) mostly among those resident in city or *contado*: a shoemaker sleeps with a carpenter's wife, a clothes-dealer with a shoemaker's, and so on. The narration of the facts is constructed so as to differentiate clearly between rape and adultery. The key element is the woman's consent. In rape cases, she calls out or tries to run to safety; if she does not, it is because her mouth is covered or because she is pinned down. In adultery cases, her consent is made explicit either by indicting

¹⁷ Gravdal, *Ravishing Maidens*, p. 9; D. Wolfthal, *Images of Rape: The 'Heroic' Tradition and its Alternatives* (Cambridge, 1999), pp. 28–32.

¹⁸ Dean, 'Fathers and daughters', pp. 98–9.

¹⁹ ASBo, Curia del Podestà, Inquisitiones, busta 257, reg. 1, fol. 54; reg. 5, fol. 2; busta 258, reg. 3, fol. 45; busta 261, reg. 6, fol. 29; busta 262, reg. 1, fol. 118; busta 263, reg. 4, fol. 74; busta 264, reg. 1, fols. 20, 43, 51; busta 266, reg. 1, fol. 263; reg. 2, fol. 30; busta 267, reg. 1, fols. 30, 34; busta 268, reg. 1, fol. 109; busta 269, reg. 1, fol. 78; reg. 2, fol. 84; busta 270, reg. 1, fol. 103; busta 273, reg. 1, fol. 64; reg. 2, fol. 94; reg. 3, fols. 38, 40; busta 274, reg. 2, fol. 67; reg. 5, fols. 28, 31; reg. 6, fols. 122, 152.

²⁰ ASLu, Capitano del Popolo, 4, 14 May, 16 May, 1 Sept. 1365; Podestà di Lucca, 5190, fols. 29–30, 114.

²¹ ASBo, Curia del Podestà, Inquisitiones, busta 238, reg. 8, fol. 79; busta 241, reg. 1, fol. 230.

her alongside her lover, or by the narration: in one case, a man uses a go-between to ask outright for a sexual assignation, which the woman grants. Whether rape was 'really' as rare as it appears in the trial records is hard to establish: difficulties were certainly put in the path of women seeking to report rape (see above, p. 25), but we should not necessarily conclude that there was a vast unreported mass of sexual violence.²²

SODOMY

The rhetoric of laws on sodomy was alarmed and alarming. Perhaps only the laws against gambling equalled them for their sense of impending calamity, but whereas gambling was thought to bring purely human disaster, in the form of violence and impoverishment, sodomy was thought to bring divine retribution. And for this there was a precedent, in the destruction, often referred to, of the cities of Sodom and Gomorrah (Genesis 18–19). The preamble to a Venetian law of 1464 'reminded the Venetians that . . . God had submerged ancient Sodom, sparing no one, covering every inch of earth with sulphurous water, so that to the present day the land still stank, so too he might plunge . . . Venice back into the saltry Adriatic swamps from which He had raised it', if the crime of sodomy were not obliterated.²³ Perugian statutes rehearse the opinion (attributed to Augustine) that the Christian incarnation itself was occasioned by divine observation of this 'horrendous and detestable sin' among humankind.²⁴ The king of Naples warned that this 'abominable vice' was one of the chief crimes provoking God's anger, causing famine, war, pestilence and earthquakes.²⁵ Both just and unjust inhabitants of cities perish equally, he reminded his audience, in a clear reference to Abraham's effort to save the innocent of Sodom from destruction.

The penalties did not always match the rhetoric. Statutes on sodomy vary between those that indiscriminately apply the penalty of burning,²⁶ and those that differentiate according to age, number of offences or sexual position. Siena, for example, applied the death penalty only to active partners aged over forty; the under-forties, and younger passives, were to be

²² See the discussion in Dean, *Crime in Medieval Europe*.

²³ P. H. Labalme, 'Sodomy and Venetian justice in the Renaissance', *Tijdschrift voor Rechtsgeschiedenis*, 52 (1984), p. 221.

²⁴ *Statuti di Perugia dell'anno MCCCXLII*, ed. Degli Azzi, vol. 2, p. 79.

²⁵ *Pragmaticae regni novae et antiquae* (Naples, 1551), p. 17.

²⁶ *Statuti di Ascoli Piceno dell'anno MCCCLXXVII*, ed. L. Zdekauer and P. Sella (Rome, 1910), p. 88; *Statuti del comune di Ravenna*, ed. Tarlazzi, p. 165; *Pragmaticae regni*, pp. 17–18.

whipped through the city to the sound of trumpets.²⁷ Perugia laid down graded fines for the first two offences, then death for a third.²⁸ Florence's statutes of 1325 appointed death only for foreign molesters of boys, while anyone else found with a boy was to be castrated, and the boy was to be fined (50 *lire* if under 14, doubled if 14–18); later in the century Florence decreed the death penalty for all sodomites save for under-18 passives.²⁹ In the fifteenth century, the distinction between active and passive partners in this crime became more complex, now crossed with the issue of intention: passives over a certain age, if consenting to the nefarious deed, were to suffer the death penalty, but if forced by fear or violence, they were not to be punished.³⁰ A legal reform in Lucca in 1448, which established a citizen tribunal to investigate sodomy, graded penalties even more finely: offenders were divided into four age-groups (under 18, 18–30, 30–50 and over 50), with penalties for each age-group varying according to the number of offences.³¹ Only for the over-fifties did a first offence bring death. Such a survey of the statutes, however, needs to acknowledge, first, that laws do not uniformly equate sodomy with pederasty and, second, that most cities did not deem sodomy a frequent enough crime to warrant a specific clause in their statutes (apparently content that it be left to the Podestà's discretion).

The laws that differentiate between ages and positions also tend to abrogate the normal procedures and proofs of the criminal law. The new sodomy investigation panel in Lucca was not required to observe statutory procedures. In Cesena the Podestà could proceed on merely 'probable' evidence.³² Perugia established a system of secret denunciation, with boxes in public places for posting slips of paper bearing allegations; eight of these slips naming the same person were to be sufficient for proof. In Florence the normal requirement for two eye-witnesses was reduced to one, with two witnesses to *fama*, and the Podestà could use torture as often as he liked, without the usual requirement for new evidence.

Fine differentiations in law tended to get lost in practice. In Lucca neither of two cases that arose in 1458 was punished in accordance with the statutes. In the first, a man, said to be aged over eighteen, who sodomised a twelve-year-old servant of the Podestà was sentenced to a whipping, a period in

²⁷ D. Ciampoli, 'Una raccolta di provvisioni senesi agli albori del xv secolo: Il "Libro della Catena"', *Bullettino senese di storia patria*, 86 (1979), pp. 256, 264.

²⁸ *Statuti di Perugia*, p. 79. ²⁹ *Statuto del Podestà dell'anno 1325*, pp. 198–200.

³⁰ *Statuta floride et alme civitatis Cesene*, clause 49; *Statuta lucensis civitatis*, IV.91. ³¹ *Ibid.*

³² On 'probable' *indicia*, as opposed to *temeraria* (or *leves*) and *violenta*, see G. Alessi Palazzolo, *Prova legale e pena: la crisi del sistema tra Medioevo e moderno* (Naples, 1979), pp. 47–53; Kantorowicz, *Albertus Gandinus*, vol. 2, pp. 75, 80.

the stocks and a fine, which exceeded the penalty for his age-group.³³ In the second, the Podestà did not seem to know what to do with a woman from Nijmegen who let herself be carnally known 'in the anus from behind' by various men, on separate occasions: she was held in prison for seven months before the court decided that, as she was a prostitute (and therefore possibly fell outside the law), and was heavily indebted (and therefore probably could not pay a fine), she should simply be banished.³⁴

Outside Florence and Venice, cases were much rarer, to the extent that one historian has seen sodomy as a negligible peril.³⁵ Prosecution and punishment concentrated almost exclusively on foreigners who sodomised children, in other words on the marginal and the extreme.³⁶ In Bologna, a man from Appignano (Marche) sodomised a four-year old from Milan; a Sienese servant repeatedly paid a gardener's son to be sodomised in fields outside the city gates; two French Jews raped an unnamed Jewish youth; a vagabond from Fabriano took a boy to the Eagle Tavern, fed him and went to bed with him; and a Hungarian sodomised a boy in a hostel.³⁷ A *contadino* turned to sodomising girls only when he could not rape them vaginally.³⁸ In Savona, the judicial registers provide only two prosecutions for sodomy: one a man from Lodi, who confessed to sodomising boys in various armies and military camps across Lombardy in the 1450s, and the other a Sicilian from Messina, who persuaded his room-mate in a hostel to let him share his bed, as his own was 'full of worms', and then tried to kiss and sodomise him.³⁹ In Sicily in 1484, it was a black slave, doubly an outsider, who committed sodomy.⁴⁰ Most of these men were condemned to death.

Only rarely do we come across what appear to be rather different relationships, and then there is some evidence of different responses. In Bologna an armourer and a 'slave' from Segna were arrested because they were said to have constantly committed the crime of sodomy, but they were released and pardoned by the papal legate.⁴¹ This seems reminiscent of a Venetian case, mentioned by Ruggiero, that Alan Bray drew attention to: the long sexual relationship between a herald and a Saracen teenager, which was

³³ ASLu, Podestà di Lucca, 5268, fol. 37. ³⁴ Ibid., fols. 182–v.

³⁵ Comba, "Apetitus libidinis coherceatur", p. 534–5, 569. ³⁶ Bratchel, *Lucca 1430–1494*, p. 14.

³⁷ ASBo, Curia del Podestà, Sententiae, busta 36, fols. 31–2 (1419); busta 40, fols. 29–v (1471); Inquisitiones, busta 304, reg. 3, fols. 206–8; busta 341, reg. 1, fols. 75–7 (1436); busta 360, reg. 1, fol. III.

³⁸ Ibid., busta 334, reg. 2, fols. 123–4v (1432).

³⁹ Archivio di Stato, Savona, Serie I, Comune di Savona, 1173, Liber parlamenti et condemnacionum, fols. 26–v; Libro di processi penali, fol. 274v.

⁴⁰ A. Giuffrida, 'Giustizia e società', in *Storia della Sicilia*, vol. 3, p. 553.

⁴¹ ASBo, Curia del Podestà, Inquisitiones, busta 330, reg. 1, fols. 34–v (1430).

conceived of by the latter as 'friendship'.⁴² Florentine records contain one or two similar instances: long-term affairs, eventually punished, but throwing up evidence that the behaviour was not considered threatening.⁴³ Were these cases of same-sex unions of the kind that Bray has shown were common throughout the medieval period and that aroused no concerns among the authorities? In this context the ambiguity of some statutes becomes relevant: they condemned all sodomy, but were applied only against men whom we would now call paedophiles. As Martini has pointed out, the image of sodomy from judicial records reflects judicial mechanisms more than social reality, especially in its concentration on acts against children and acts causing anal injury requiring surgical treatment.⁴⁴

Sodomy has been intensively studied in two cities of Renaissance Italy, Florence and Venice, but with different emphases and conclusions.⁴⁵ The reason for this concentration is, in each case, the existence of separate tribunals for this crime, and the survival of their records. In Florence, the Ufficiali della Notte were set up in 1432; in Venice, sodomy was at first one of the responsibilities of the Signori di Notte, and was then transferred in 1418 to the Senate's security committee, the Council of Ten. The investigations by these two bodies far exceeded in quantity those by the ordinary judiciary in other cities. In cities such as Milan, Ferrara and Bologna, or in regions such as Sicily, the number of prosecutions for sodomy was low throughout the period; in Venice, by contrast, there were hundreds, and in Florence there were thousands. Renaissance Florence abounds in allegations of sodomy largely because of a revolution in penal policy. In setting up the Ufficiali della Notte, in response to decades of pressure from preachers and moralists, the government radically revised the penalties for this offence. It moved from the 'harsh but sporadic' to the 'mild and routine', in an attempt to contain rather than eradicate this vice. There were now two jurisdictions for sodomy in the city: the ordinary courts, applying the traditional, severe penalties for serious cases; and the Ufficiali, who imposed greatly reduced fines for 'everyday' offences. It was these lighter penalties that, as Rocke says, 'opened the floodgates' to denunciations, such that between 1432 and 1502 the Ufficiali received 17,000 denunciations, of which nearly 3,000 resulted in convictions. From such figures, Rocke concludes that in the later

⁴² Ruggiero, *Boundaries of Eros*, pp. 116–17 (but cf. the similar case on pp. 115–16, in which both men were ordered to be burned to death); A. Bray, review, *Journal of Homosexuality*, 16 (1988), pp. 502–3.

⁴³ Rocke, *Forbidden Friendships*, pp. 23–6.

⁴⁴ G. Martini, 'Sodomia e discriminazione morale a Venezia nei secoli xv–xvii: tendenze evolutive', *Atti dell'Istituto veneto di scienze, lettere ed arti*, 145 (1986–7), p. 344.

⁴⁵ Rocke, *Forbidden Friendships*; Labalme, 'Sodomy and Venetian justice in the Renaissance'; Ruggiero, *Boundaries of Eros*.

fifteenth century the majority of Florentine males were accused of sodomy at least once in their lives. Even allowing for some degree of malicious incrimination, these figures are so far out of line with other cities as to need particular explanation. Sodomy, Rocke says, was a common, not deviant, practice among Florentine males because it was part of the male life-cycle: the sexual coupling of active adult and passive teenager occurred sporadically over a brief period in their lives when they were expected to 'flaunt their virility' but were denied access to economic and political power, and to matrimony. Marriage mostly brought this behaviour to an end. However, sodomy was not just the sexual opportunism of young men lacking heterosexual outlets, partly because those outlets were never wholly lacking (prostitutes, servants), and partly because married men formed a substantial minority of those accused of sodomy. Yet, because sodomy was common, not deviant, there was no 'homosexual' sub-culture, and sexual encounters took place in ordinary social contexts, in places and at times when men customarily socialised, not in separate, marked and known meeting-places. There is therefore no 'sub-cultural' explanation, but neither is there one in terms of restricted sexual access to women. Florentine sodomites were not, Rocke insists, 'situational bisexuals',⁴⁶ and he locates an explanation within masculinity, in the acquisition and enactment of manhood through an erotic focus on adolescents.⁴⁷

Rocke's study has not gone without criticism. Sam Cohn attacked it on several fronts.⁴⁸ First, the alleged absence of a sub-culture: Cohn suspects that the evidence for meeting-places and special taverns is there, if we look hard enough for it. Secondly, the statistics: Cohn points out that Rocke made a gross error in calculating the proportion of Florentine males who engaged in sodomy, by taking the population of Florence for only one year (1480) but the total number of indicted males for twenty-five years (1478–1502). By recalculating Rocke's figures, Cohn deflates the estimate of Florentine males engaged in sodomy from a majority to a minority (a quarter or less). Thus it might be said that Cohn seems to want to put the deviancy back into sodomy: a minority, not a majority practice; marginal, not mainstream. By reconfiguring the problem in this way, however, Cohn overlooks one feature of prosecutions in Florence: their predominantly local character. Florentine courts prosecuted Florentines for this crime, whereas courts in other cities prosecuted foreigners almost exclusively. Even in Venice, a cosmopolitan port, foreign men were common among those investigated. Cohn himself refers to this distinctiveness of

⁴⁶ *Forbidden Friendships*, pp. 121–2.

⁴⁷ *Ibid.*, pp. 91–105.

⁴⁸ *Speculum*, 74 (1999), pp. 481–3.

sodomy in Florence when he refers to the many contemporary responses: the German term *Florenzer* meant sodomite; Genoa prohibited Florentines from acting as schoolmasters; churchmen derided and condemned Florence's notoriety for this practice. Roche's explanation within masculinity, rather than within gender relations, has also drawn criticism. If it is the case, says Lauro Martines, that 'the macho extremism of Tuscan society, where poets could produce hymns to their penises-as-falcons . . . drove boys and men together in an orgy of male narcissism', then this could only be the product of a high level of misogyny, and an explanation in terms of gender relations is needed.⁴⁹ Such an explanation would need to examine the solidarities among males – and the specific challenges to them – that led Florentine governments, almost alone, to police this border of masculinity so closely.⁵⁰

It is not only in numbers and status of suspects that sodomy in Venice, and its repression, differed from those in Florence. In Ruggiero's account, the existence of a sub-culture is not only embraced, but is called on to explain the greater urgency and rigour injected into investigations in the fifteenth century. The 'homosexual' sub-culture was thus a 'major element' of the broader culture of illicit sex that Ruggiero sees as forming and growing in this period of Venetian history. For evidence, Ruggiero points to the fact that it was groups, not individuals, who were rounded up and questioned; and that the government directed the anti-sodomy patrols to inspect particular premises, such as schools and barber's shops, or specific porches and porticoes, as if these were known rendezvous.⁵¹

A comparative study of Florence and Venice alone thus throws up both similarities and differences – specific tribunals, large numbers of cases, but variant explanations – but the major comparison should be between Florence/Venice and everywhere else, because sodomy there seems to have had different features and to have been less of a problem.

THE JEW IN THE BROTHEL

In June 1456 a vagabond Jew, Consilio the son of Musetto, was prosecuted in Bologna for a series of sexual exploits. In November 1453, he allegedly took a Christian woman back to his hospice and had sex with her, 'with

⁴⁹ *Times Literary Supplement*, 2 May 1997, pp. 29–30.

⁵⁰ This line of thought is suggested by J. Tosh, 'Hegemonic masculinity and gender history', in *Masculinities in Politics and War: Gendering Modern History*, ed. S. Dudink, K. Hagemann and J. Tosh (Manchester, 2004), p. 46.

⁵¹ *Boundaries of Eros*, pp. 135–140.

sacrilegious intent', 'in contempt of Christian religion', and 'contrary to the city statutes'. The indictment then stated that, from that time forward, he had sex with many Christian women, especially in a 'stew' (*stuffa*) in the city, 'putting aside Jewish law', and 'led only by a devilish spirit'. Finally, in June 1456, 'never satisfied with giving offence to the almighty Father and the Catholic faith', he had sex with another woman, probably a prostitute, knowing she was a Christian, and was caught in the act. He confessed to these crimes, and was sent to prison.⁵² What punishment was inflicted on Consilio is not recorded. Two things are clear from the indictment, however: a certain belief that his actions were against the city's laws; and a heightened sense of outrage, in that Consilio's behaviour was regarded not just as criminal, but as sacrilegious, contemptuous and diabolical. This sort of language connected this offence with other Jewish crimes, such as besmirching a crucifix with filth.⁵³

In April 1467, the same Jew – now called Consilio, the son of Musetto, from Bologna – visited the brothel in Lucca and had sex with 'Margarita from Ferrara'.⁵⁴ Within days, he was prosecuted by the Capitano for illicit sexual relations with a Christian. Though he confessed to the crime, a debate ensued between his attorney and one of the city's legal officers regarding the status of this offence. The Jew's attorney argued that there was no law laying down a penalty for Jews who had sex with prostitutes, nor indeed could there be, as prostitutes have, by definition, subjected themselves to 'all kinds of foulness': they have sex with all comers, without choosing or differentiating. There is also, he said, a 'general rule' that prostitutes' clients are not liable to any penalty. His opponent declared these objections 'frivolous', 'irrelevant' and 'inconclusive', and asserted that 'the law' does not tolerate Jews having sex with Christian women, that a Jew marrying a Christian woman would incur the death penalty, and so, by analogy, should one who visits a prostitute. He also denied the existence of any 'general rule', as this was not established by law but only by 'common tolerance in order to avoid fornication and to escape worse crimes'. He concluded with the demand that 'this Jew must die'. How this case was decided is not clear; what is significant about it is the legal arguments between the two lawyers. One argues for the absence of law, and the presence of a rule; the other for the presence of law, and the absence of a rule. They cannot both be right, so what was the law?

⁵² ASBo, Comune, Curia del Podestà, Inquisitiones, busta 361, reg. 1, fols. 197–v.

⁵³ Petrus de Ankarano, *Consilia, consilium* 15.

⁵⁴ ASLu, Capitano del Popolo, 33, fols. 10–13v. The indictment calls him 'Consilium Basi de Bononia ebreum forenssem filium quondam Museti'.

There was certainly no statute in Lucca on this issue, but 'the law' encompassed more than just one city's municipal statute. Other cities had legislated on this offence: Ravenna and Perugia in the fourteenth century, Padua in the early fifteenth, Venice in the 1420s, Milan in 1439 and again in 1470.⁵⁵ And the trajectory of their penalties was towards increasing severity. Perugian law imposed corporal penalties only on the Christian woman who allowed herself to be 'known' by a Jewish man. The statute of Ravenna punished the Jew with an undifferentiated fine. The law in Padua and Brescia – both under Venetian rule – graduated the Jew's penalty according to the status of the woman: a whipping and six months' imprisonment if she was a prostitute; a whipping, a year's imprisonment and banishment if she was unmarried; death by burning only if she was married.⁵⁶ Venice itself laid down penalties with two elements – a fine and incarceration – and after a few years doubled the term of imprisonment. In Milan, the financial penalty of 1439 was replaced in 1470 by the death penalty. So civic law, though it was prescribing harsher penalties for miscegenation, was doing so in a differentiated fashion.⁵⁷ And enforcement was even more uneven: though a Jew was executed in Milan in 1480, one in mid-fifteenth-century Florence was fined for visiting a stew, and Jews in Sicily were composing with the crown for sexual relations with Christian women, including prostitutes.⁵⁸

'The law' also meant canon law, and this was examined in the early fifteenth century by a jurist in Perugia, Petrus de Ubaldis.⁵⁹ The case put to him was this: a Jew staying in Città di Castello had been to the brothel and had sex with a Christian woman. Was this punishable? If so, what was the penalty? Petrus uses the argument that prostitutes are by definition 'subject to the lust of many men', but he also examines the canon law. This, he concedes, does prohibit sexual 'mixing' between Christians and Jews, but it does not specify that this applies to prostitutes, nor does it

⁵⁵ *Statuti del comune di Ravenna*, p. 165; *Statuti di Perugia dell'anno MCCCXLII*, p. 122; *Statuta patavina*, p. 114; Ruggiero, *Boundaries of Eros*, pp. 86–7; C. Invernizzi, 'Gli ebrei a Pavia', *Bollettino della Società pavese di storia patria*, 5 (1905), p. 194. See also the brief remarks of Pertile, *Storia del diritto italiano*, vol. 5, p. 523.

⁵⁶ For the Brescian statute of 1465: *Leges brixianae* (1490), clause 74 of the *Statuta criminalia*.

⁵⁷ Cf. the unilateral assertion of J. A. Brundage, *Law, Sex and Christian Society in Medieval Europe* (Chicago and London, 1987), pp. 461–2, 518.

⁵⁸ M. Ciardini, *I banchieri ebrei in Firenze nel secolo XV e il Monte di Pietà fondato da Girolamo Savonarola* (Borgo S. Lorenzo, 1907), pp. xli–xliii (1463); Ryder, 'The incidence of crime in Sicily in the mid fifteenth century', pp. 63, 68–9.

⁵⁹ British Library, Add. MSS 21,613, fol. 83. For the general theme of Jews in *consilia*, see D. Quagliioni, 'Gli ebrei nei consilia del Quattrocento veneto', in *Consilia im späten Mittelalter*, ed. I. Baumgärtner (Sigmaringen, 1995).

appoint any penalty. Petrus therefore concludes that no penalty can be imposed by either secular or ecclesiastical judges. This conclusion is partly confirmed by modern investigation of the issue: canon law was not explicit, but canon lawyers worked on the assumption that Jews could not have sex with Christians; only secular law appointed any penalties.⁶⁰

The prosecution of Jews for sexual offences was quite rare – fewer than a dozen cases have been found across two hundred years of Perugia's history⁶¹ – though it is claimed that the statements of rabbis, preachers and moralists of both religions suggest much greater frequency.⁶² However, it was just one aspect of a much wider and growing intolerance of Jews within Christian society in the fifteenth century. Some of these accusations were demonstrably false,⁶³ and fall into a pattern of vexatious prosecution of which Jews complained and rulers warned.⁶⁴ The hardening of penalties for such sex crime is evidence of the increasing anxiety at Jewish bodily proximity to things that Christians shared. This anxiety most affected three key commodities: meat, the mass-host, and women's bodies. Tales of host desecration fuelled a sense of Jews as an 'ever-present danger to the [Christian] faith, enacting contempt for Christianity and evil intent towards Christ'.⁶⁵ The frequent requests and orders for separate butcheries manifested fears of contamination.⁶⁶ The concern was to keep Jews' dirty hands off dead meat and living flesh intended for Christian use. Moreover, following the execution of Jews convicted of killing a Christian boy in Trent in 1475 in order to obtain blood for Passover rituals,⁶⁷ the figure of the Jew as child-killer and blood-sucker joined that of the Jew as poisoner and polluter. As a consequence, allegations of ritual killing of children proliferated.⁶⁸ However, recent historiography has cautioned against this reduction of Jewish history to that of perpetual victimhood, and against the reduction

⁶⁰ J. A. Brundage, 'Intermarriage between Christians and Jews in medieval canon law', *Jewish History*, 3 (1988), pp. 29–30, 39.

⁶¹ A. Toaff, *Il vino e la carne: una comunità ebraica nel Medioevo* (Bologna, 1989), pp. 134–5.

⁶² S. W. Baron, *Ancient and Medieval Jewish History* (New Brunswick, 1972), p. 245.

⁶³ A. Veronese, 'Per la storia della presenza ebraica in Toscana: tre processi volterrani contro un medico ebreo', *Bollettino storico pisano*, 60 (1991), pp. 337–8; N. Ferorelli, *Gli ebrei nell'Italia meridionale dall'età romana al secolo XVIII* (Turin, 1915), pp. 190–1.

⁶⁴ *Codice diplomatico dei giudei di Sicilia*, ed. B. Lagumina and G. Lagumina (Palermo, 1884), vol. 1, pp. 97, 124; Invernizzi, 'Gli ebrei a Pavia', p. 214. See also Lucchesi, *Si quis occidit*, p. 108.

⁶⁵ M. Rubin, *Gentile Tales: The Narrative Assault on Late Medieval Jews* (New Haven and London, 1999), pp. 1–2.

⁶⁶ Lagumina, *Codice diplomatico*, pp. 418, 423, 593; Invernizzi, 'Gli ebrei a Pavia', p. 194; C. Artocchini, 'Presenze ebraiche a Piacenza nell'alto e basso Medioevo', *Archivio storico per le province parmensi*, 4th ser., 44 (1992), p. 111.

⁶⁷ R. Po-Chia Hsia, *Trent 1475: Stories of a Ritual Murder Trial* (New Haven, 1992).

⁶⁸ *Ibid.*, p. 128; Toaff, *Il vino e la carne*, pp. 175–7; Invernizzi, 'Gli ebrei a Pavia', p. 214.

of Jewish–Christian relations to those of antagonism and oppression.⁶⁹ Against the intolerance shown in specific circumstances – the anti-semitic outbursts that followed Observant preaching, the stoning of Jewish houses on Good Friday⁷⁰ – is to be set the relaxed relations in everyday life, the collaboration, coexistence, trust and appreciation (on which, see below, p. 162). However, as Muzzarelli has said, Observant preaching changed the balance in Christian–Jewish relations,⁷¹ and put the focus on what they *did* not share (religion, culture, marriage, burial, schooling) and on what they *should* not share.

SLAVE SEX

In the wake of the Black Death, slave-owning spread among the propertied classes of north and central Italy, not as a real solution to the labour shortage but as a political statement, a manifestation of employers' alarm at workers' demands for higher wages.⁷² As slaves were pieces of property, new laws had to be coined for injuries to slave-owners committed either by their slaves or against their slaves. Chief among the latter was fornication. Masters in any case sought to exert control over the sex lives of their servants, in the interests of an orderly household and a docile workforce.⁷³ But the institution of slavery brought the problem of 'dealing with the human consequences of a peculiar form of property that might have children'.⁷⁴ Unlicensed fornication with a female slave could damage the owner in several ways: if the slave became pregnant, she might die in childbirth; if she gave birth, the owner could be saddled with the expense of rearing her child. These dangers were spelled out in some laws.⁷⁵ Beyond this, some

⁶⁹ A. Esposito, 'Gli Ebrei a Roma nella seconda metà del '400', in *Aspetti e problemi della presenza ebraica nell'Italia centro-settentrionale (secoli XIV e XV)* (Rome, 1983), pp. 29–30; M. G. Muzzarelli, 'Luoghi e tendenze dell'attuale storiografia italiana sulla presenza ebraica fra XIV e XVI secolo', *Società e storia*, 24 (1984), pp. 374, 391; M. Luzzati, *La casa dell'Ebreo: Saggi sugli Ebrei a Pisa e in Toscana nel Medioevo e nel Rinascimento* (Pisa, 1985); Veronese, 'Per la storia della presenza ebraica in Toscana', pp. 346–7; F. Titone, 'Il tumulto popularis del 1450: conflitto urbano e società urbana a Palermo', *Archivio storico italiano*, 163 (2005), pp. 79–80.

⁷⁰ Lagumina, *Codice diplomatico*, pp. 109, 236, 312, 421, 427, 520, 554, 595; Ferorelli, *Gli ebrei nell'Italia meridionale*, p. 60; Invernizzi, 'Gli ebrei a Pavia', p. 205.

⁷¹ M. G. Muzzarelli, 'Gli ebrei a Cesena nel XV secolo', *Studi romagnoli*, 20 (1979), p. 206.

⁷² P. Guarducci and V. Ottanelli, *I servitori domestici della casa borghese toscana nel basso medioevo* (Florence, 1982), pp. 78–80.

⁷³ D. Romano, *Housecraft and Statecraft: Domestic Service in Renaissance Venice, 1400–1600* (Baltimore, 1996), p. 213.

⁷⁴ S. A. Epstein, 'A late medieval lawyer confronts slavery: the cases of Bartolomeo de Bosco', *Slavery and Abolition*, 20:3 (1999), p. 49.

⁷⁵ *Statuta et decreta communis Genuae* (Bologna, 1498), fol. 23.

owners felt a sense of outraged honour. This has been denied by Klapisch-Zuber: to make a slave pregnant, she says, injured property, not honour; owners do not speak of outrage, and they seek compensation and damages, not revenge.⁷⁶ However, her view of this issue is limited by the source she uses (family record-books); judicial sources show that honour was at stake. Several prosecutions speak of the 'shame' (*verecundia*) done to the owner by the slave's lover.⁷⁷ And at least one owner reacted as if penetration of his property by an unknown man stung like an affront to his manhood: when the father of a slave-owner found a Gascon man in bed with the slave, he cut off his testicles with a table-knife, just as a husband might on finding his wife *in flagrante delicto* (see above, p. 68).⁷⁸ Some laws on sex with slaves sought mainly to penalise the offence, by corporal punishment of the slave and financial penalty on the man (thus Venice); others sought mainly to compensate the owner (thus Genoa and Florence); a third type did both, imposing fines on the man and requiring him to buy the slave, at two or three times the price originally paid by the owner (thus Lucca and Siena).⁷⁹ And slave-owners made use of these laws. At Lucca as early as the 1380s they are accusing men of entering their houses to have sex with their female slaves and asking the judge to require the accused to purchase the slave.⁸⁰ By the 1390s, inquisition, *ex officio*, is being used in such cases.⁸¹ The slave-owners are notaries, merchants, noblemen; the lovers are artisans and manual workers; the sexual relations are not single occasions, but are claimed to have continued over several months, indicating that these are relationships, not the snatched carnal moments, the brief sexual encounters, of the historiography.⁸²

PROSTITUTION

Prostitution was not in itself a crime, but was seen rather as having some social utility, protecting married women, girls and boys from sexual

⁷⁶ C. Klapisch-Zuber, 'Women servants in Florence during the fourteenth and fifteenth centuries', in *Women and Work in Preindustrial Europe*, ed. B. A. Hanawalt (Bloomington, 1986), pp. 72–3.

⁷⁷ ASLu, Podestà di Lucca, 5045, 12 May 1386; 5190, fols 196–7v; Capitano del Popolo, 16, fol. 15.

⁷⁸ ASBo, Curia del Podestà, Inquisitiones, busta 271, reg. 1, fols. 62–5v (1397).

⁷⁹ *Capitolare dei Signori di Notte*, ed. Nani Mocenigo, pp. 40–1; *Statuta et decreta communis Genuae*, fol. 23; A. Zanelli, *Le schiave orientali a Firenze nei secoli XIV e XV* (Florence, 1885), p. 61; S. Bongi, 'Le schiave orientali in Italia', *Nuova antologia*, 2 (1866), pp. 272–3; *Statuta lucensis civitatis*, IV.87; C. Shaw, 'Provisions following "Proposte generali" 1436 and 1456', in *Siena e il suo territorio nel Rinascimento*, vol. 3, ed. M. Ascheri (Siena, 2000), pp. 145–6.

⁸⁰ ASLu, Podestà di Lucca, 5045, 12 May 1386; Capitano del Popolo, 11, 20 June 1388.

⁸¹ Ibid., Capitano del Popolo, 16, fol. 15.

⁸² Ibid., Podestà di Lucca, 5190, fols. 196–7v (1422); 5284, fols. 133–4v, 146 (1467); 5386, fol. 26 (1499). Cf. Guarducci and Ottanelli, *I servitori domestici*, p. 70.

advances. Prostitutes could be seen as allies in the battle against the more serious sins of adultery and sodomy.⁸³ However, statute-law did seek to regulate the sex trade, and to tackle the criminality that nourished and surrounded it. Historians usually adopt a three-part schema to describe the evolution of the state's attitude to prostitution.⁸⁴ The late thirteenth and early fourteenth centuries are thus seen as a period of expulsion and segregation. Legislators aimed to expel pimps and whores from the city's main square or from the vicinity of the cathedral, friaries or all city churches.⁸⁵ Alternatively, they forbade them to live in the city altogether, except in a designated area, which was often along the city walls or in unused, ruinous places, such as the Roman arena in Verona.⁸⁶ The later fourteenth century is presented as a period of gradual 'reconquest' of the city by prostitutes, as we find records of fines imposed on them for walking the streets in the centre of town, or claiming that it is now customary for them to live in all districts of the city (except parishes named after the Virgin Mary). In the fifteenth century, the last phase sees a government volte-face, with the authorities putting aside repression and creating public brothels. This is variously seen as part of a campaign to protect marriage from adultery and sodomy and to promote procreation, or as part of a government strategy to impose Christian moral discipline by preventing disorder and the mingling of prostitutes with 'decent' women.⁸⁷

The problem with this three-part scheme is that the phases often seem to overlap, or (as in Piedmont) one phase seems to be omitted.⁸⁸ It is true that the concern to prevent prostitutes polluting decent women by living or moving among them is expressed frequently in fifteenth-century documents: the customs of Corleone (1439) speak of the need to segregate the 'stained woman' from 'decent neighbourhoods', while those of Palermo warn of the corruption of good and decent people by the presence of prostitutes.⁸⁹ Both cities, like others such as Genoa or Brescia, allowed the authorities to expel any woman from a district if just a small group of female neighbours swore that she was, or they believed her to be, a pimp or

⁸³ But see the contrary conclusion of Comba, "Apetitus libidinis coherceatur", pp. 568–70.

⁸⁴ Dean, *Crime in Medieval Europe*, pp. 87–8.

⁸⁵ *Codex statutorum magnifice communitatis atque dicaesis Alexandrinae*, p. 31 (1297 statutes); *Statuta communis Parmae*, ed. Ronchini, pp. 272–3; *Statuto del Podestà dell'anno 1325*, p. 244. Also Pertile, *Storia del diritto italiano*, vol. 5, p. 540.

⁸⁶ *Statuta patavina*, fol. 129v–30 (1281); *Statuto di Arezzo (1327)*, ed. Maurri Camerani, p. 227; *Statuta civitatis Mutine anno 1327 reformata*, p. 523; *Lo statuto di Bergamo del 1331*, ed. Storti Storch, p. 157.

⁸⁷ Pertile, *Storia del diritto italiano*, vol. 5, pp. 541–2; Comba, "Apetitus libidinis coherceatur", pp. 569–70.

⁸⁸ *Ibid.*, pp. 566–8. ⁸⁹ La Mantia, *Antiche consuetudini delle città di Sicilia*, pp. cclxiii, 186.

a prostitute. However, this concern was not only the product of a fifteenth-century moral campaign, as it had deeper roots. It is already present in the statutes of L'Aquila in 1315, where it is stated to be a royal law (*consuetudo*).⁹⁰ It is present in the statutes of Ravenna, later in the century, complete with explicit fears lest the city's religious identity be 'violated by the pollution and contamination of whores'.⁹¹ Nevertheless, it does seem in the fifteenth century to have led to the generalisation of the legal requirement that prostitutes wear some distinctive dress, strikingly visible by length, height or colour: a neckerchief three *braccia* long (Padua); a head-dress with 'horns' (Savoy), or a strip of white cloth over the arm (Verona).⁹² Also more evident in the fifteenth century is a concern for women forced or tricked into the sex trade. Again, this is present earlier (the Florentine laws forbade the purchase of women for keeping in a brothel or tavern, and allowed the removal of any women who wanted to leave),⁹³ but becomes more common later. The lord of Milan outlawed the trade in women for prostitution.⁹⁴ The duke of Savoy ordered the arrest and punishment of pimps who lured girls to their houses, provided them with food and clothing, then seduced or forced them to give up their chastity.⁹⁵ And the king of Naples took action against the practice of pimps selling women into debt-slavery to inn-keepers, the women being beaten into submission and never able to repay the debt.⁹⁶

Much of this policing of the brothel probably took place in summary fashion, unrecorded by the court notaries. Nevertheless, this body of legislation does leave some traces in the court record. The practice of women labelling their neighbours as whores produced many actions for defamation (see above, p. 114). Occasionally, judicial action to remove 'whores' is recorded.⁹⁷ Pimps are sometimes prosecuted for keeping bawdy houses, and one prostitute in Bologna – 'called Ursolina from Vienna' – was imprisoned for persistently corrupting young men in the city, 'seducing' them with her 'damned and perverse skills', extorting great gifts from them, and turning them from a life of honest toil to one of 'lewd indecency'. Such incarcerations may have been common; we hear of this instance only because the

⁹⁰ *Statuta civitatis Aquile*, ed. Clementi, pp. 307–8. ⁹¹ *Statuti del comune di Ravenna*, pp. 175–6.

⁹² *Statuta patavina*, fol. 130; *Decreta Sabaudie ducalia*, p. 134; *Statuta civitatis Verone* (Vicenza, 1475), IV, 57; Davidson, 'Sexual sin and sexual crime in Italy', p. 92.

⁹³ U. Dorini, *Il diritto penale e la delinquenza in Firenze nel sec. XIV* (Lucca, n.d.), pp. 41–2.

⁹⁴ *Antiqua ducum Mediolani decreta*, p. 129 (1387). ⁹⁵ *Decreta Sabaudie ducalia*, p. 132.

⁹⁶ *Pragmaticae regni novae et antiquae*, a confirmation in 1470 of measures taken by King Alfonso.

⁹⁷ ASMo, Manoscritti della Biblioteca, 203, A.1, 12 (11 July s.a); *Acta curie felicis urbis Panormi*, vol. 12, *Registri di lettere atti bandi e ingiunzioni (1400–1401 e 1406–1408)*, ed. P. Sardina (Palermo, 1996), pp. 181–2.

prison warder, who obviously could not resist her either, let her escape and was prosecuted.⁹⁸ Moreover, the violence of pimps occasionally bursts into the pages of local chronicles, for example one in Forlì in the 1430s who robbed and killed his former prostitute.⁹⁹

The common trends in the criminalisation and policing of sex crimes seem at first glance the dominant ones. Laws on adultery and rape became much more severe across the peninsula from the middle of the fourteenth century. Much of this legislation bears the obvious imprint of subjectivist legal analysis, in the distinctions between those who consented, and presumably took pleasure, and those who did not, as also in the differentiation by age. Concern regarding sodomy became intense in a number of cities in the first half of the fifteenth century. Also intensifying in that century was a desire to segregate decent women from prostitutes, and to protect and rescue women from prostitution. Some categories of sexual offence emerged newly, or were given greater definition, because of the presence of new social groups whose sexual behaviour was seen to need controlling: slaves and Jews. Legislators everywhere, under the influence of Observant preaching, seem to express a fear of contamination and a desire for cleansing. Yet it is well to take note of the inconsistencies and divergences: sodomy was a negligible concern in much of Italy; new laws on slave sex seem to be a feature mainly of port-cities and of Tuscany; prosecutions of Jews for sex crimes was rare. A focus on Florence and Venice alone would thus give an inaccurate picture of the character and development of sex crime in the late medieval period.

⁹⁸ ASBo, Curia del Podestà, Inquisitiones, busta 301, reg. 1, fols. 150–2v (1413).

⁹⁹ Giovanni di Maestro Pedrino depintore, *Cronica del suo tempo*, vol. 1, p. 395.

CHAPTER 8

Potions and poisons

In March 1385, Nanna, a widow of Bologna, and Barbarina, a priest's daughter, were prosecuted by the Podestà through *ex officio* inquisition for concerting together to make 'incantations and spells (*facturas*)'. Nanna had allegedly said to Barberina:

If you want Simon the son of Fra Silvestro, whom you love, to love you and not to be able to love another woman, and to marry you, you will have to do the following incantations and spells: feed him some of your menstrual blood, by putting it in a pie (*pastrino*); take some of your pubic hair, burn it, grind it to a powder, and put it in his food; and, at the third hour of night, enter our garden, your hair dishevelled, and say this incantation: 'I get up in the east with Simone and with all his family, with breeches on my head and hair on my feet. O demon, where are you going, where do you come from? I am going to Barbarina . . .'.

Barbarina, according to the indictment, at once set about following these instructions. She made the pie with some of her blood, though when Simone did not come to dinner as expected, she had to throw it away when it became rotten. She burned some of her hairs, and put them in food that Simone ate. She performed the nocturnal incantation. In response to the prosecution, the two women appeared and denied the charge.

Witnesses were summoned. One had heard that she had made the pie and done the incantation. Two others had heard from Barbarina that she had put some of her blood in a pie to give to Simone, but that subsequently she remembered God, saying 'It does not please God that I should give such a thing to Simone, nor to any person that I love. I commend myself to God, and his mother and to Saint Antony, that they might help me.' But they had also heard that a neighbour of Barbarina's had asked her to make some food, as Simone was coming to dinner; Barbarina had allegedly given her food that included her burned hair, and all in the house had eaten it. Six further witnesses attested to hearsay in the locality that the women had put a spell on Simone. The judge declared that this testimony was sufficient to

put the two women to torture, and they were summoned to undergo this. Before that could happen, a messenger from the city council, the Anziani, appeared with an order suspending the case until further notice, because Simone had come before them, asserting that he had hardly been harmed by the women and asking that no further action be taken against them, because he was now contracted to marry Barbarina.¹

The noteworthy feature of this trial lies in its surprise ending. No harm has been done. The personal appeal of the alleged victim brings a halt to an *ex officio* trial involving a charge of demonic invocation. Though the magic had apparently been successful, no further action seems to have been taken against its practitioner.

Compare a trial for poisoning: another *ex officio* inquisition, this time conducted by the Podestà of Padua in about 1414 against a woman, Cortesia de' Trapolini, and her second husband, Vinciguerra from Venice. The indictment alleged that Cortesia, while still married to her first husband, had contracted an 'indecent familiarity' with Vinciguerra, had 'carnal mixture' with him and then deliberately planned to kill her first husband by using poison. In May 1414, while in a village in the country, she prepared some ravioli, which she sent to her husband in Padua. He and his two servants ate them, began to be in pain and to vomit, and would have died had some medics not promptly provided a cure. In September 1414 she put poison in some fish soup. Her husband ate it, blood began to come from his nose and mouth, and within hours he was dead. Vinciguerra, her second husband, supplied the poison (which she kept in her house in the country), and aided and abetted the homicide. We know about this case, not because the trial documents survive, but because a leading legal consultant, Paulus de Castro, was asked for a learned opinion on whether the judge's intention to condemn this pair of poisoners was well founded. Paulus de Castro says very firmly that it was not. Paulus begins by reminding the judge that for a conviction one of three things is needed: a spontaneous confession, statements by eye-witnesses, or a very strong presumption of guilt. None of these are present in this case, he advises. There is no confession. The presumptions are only suspicions. The witness statements are not conclusive: some only report hearsay; others report that the husband several times said that his wife had poisoned him – and that proves nothing. Some witnesses speak of the ravioli and others of the fish soup, but again proving nothing because none of them *saw* Cortesia put poison in them. Anyway, the vomiting could have had some other cause, for example a 'choleric disease'. Also, Cortesia kept a basin of vomit to be shown to medics, which she

¹ ASBo, Comune, Curia del Podestà, Inquisitiones, busta 246, reg. 1, fols. 37–45, 103–105v.

is unlikely to have done if she were guilty. Those witnesses who saw the corpse say they saw no sign of poisoning on it. Some witnesses say they saw her put certain 'powders' in her husband's food, but this proves nothing because they do not say that the powders were poisonous, nor is this to be presumed, as one witness says she saw Cortesia do the same thing many times, yet only the ravioli and the soup did any harm. So she cannot even be convicted for keeping poison, as it is not established that she had any. So the crime is not proved and both defendants should be acquitted.² Again, as with the case of Nanna and Barbarina, the rules of evidence and proof allow a convincing defence to be made.

This pair of cases also suggests a separation of poisoning and love-potions, in prosecution. In prosecutions for poisoning, the stereotypical configuration is the wife, her lover and the husband-victim: the lover persuades the wife to poison her husband and come away with him. In prosecutions for using love-potions, men or women teach clients recipes for inducing love in desired members of the opposite sex. People who want to poison use arsenic; people who want to attract love use menstrual blood, pubic hair, waxen images and words written on leaves or spoken to the night air.

Yet in law, poisoning and sorcery were linked offences. Medieval legal categories conjoined what historians differentiate. The law did not conceive of poisoning as a separate offence, but confused it with harmful magic.³ The same confusion is found in the attitudes of clergymen and physicians.⁴ The dominant trend in the later Middle Ages was towards specifying the death penalty for both offences. Some statutes do this in separate, unad-jacent clauses of the statutes: thus clause 50 of the 1490 statutes of Lucca prescribes a capital penalty if poisoning leads to death, and a mild fine if it does not; clause 94 prescribes a penalty of death for invoking demons, inciting sexual desire, giving 'mala medicamenta' from which a person dies or by which his 'natural, virile or mental virtue' is altered, and a fine if not.⁵ Other statutes dealt with both crimes together. An early fourteenth-century enactment by the king of Sicily against poisonings, magical incantations, divination and sorcery punished the practice of all these with death.⁶ The statutes of several cities in Piedmont appointed the same penalty for poisons

² Paulus de Castro, *Consilia, consilium* 197.

³ F. Collard, *Le crime de poison au Moyen Age* (Paris, 2003), pp. 25–30.

⁴ D. Gentilcore, *Healers and Healing in Early Modern Italy* (Manchester, 1998), pp. 103–4.

⁵ *Statuta lucensis civitatis*, IV.50 and 94.

⁶ *Capitula regni Siciliae*, ed. Testa, p. 83; C. R. Backman, *The Decline and Fall of Medieval Sicily: Politics, Religion and Economy in the Reign of Frederick III, 1296–1337* (Cambridge, 1995), pp. 206–8. This enactment clearly built on the equation of 'amatoria pocula' and 'cibos noxios' in a constitution of Frederick II: *Constitutiones regni Siciliae per . . . Andream de Ysernia comentatae . . .* (Naples, 1552), pp. 367–8.

and spells.⁷ Poisoning was one of the few crimes where the attempt was criminalised as well as the completed act. In Cesena it was a capital offence to poison someone even if the victim did not die.⁸ In Genoa the early fifteenth-century statutes declare that many citizens are killed or made seriously ill by potions given to them by their servants, who are not punished by the death penalty because they say that they did it not with an evil intent, to inflict death, but rather to induce love. Henceforth, the statute declares, any servant or slave who gives such a potion from which someone becomes ill or dies, *even if it is done with the intention of inducing love, not of killing*, is to suffer the death penalty.⁹

In judicial practice, the two crimes – potions and poisons – seem to have been kept apart, whereas in law they were confused. What a love-potion shared with poison was that it was administered clandestinely, could cause illness or death, and was a tool of women against men. The law seems to have developed under two influences. The first is the Roman *lex Cornelia* on murderers and poisoners (the king of Sicily refers explicitly to this, other lawmakers implicitly). This law had set penalties for making, selling or administering a drug for the purpose of homicide, but had had to be clarified later by the Roman senate, which acknowledged that there were different types of drug (medicinal, homicidal and aphrodisiac), and clarified liability.¹⁰ The second influence was perhaps the prominence of shocking cases in which female servants did attempt, sometimes successfully, to poison their masters.¹¹

However, if poisoning was linked to sorcery, sorcery evolved into witchcraft. For almost two centuries, the dominant form of prosecuted sorcery in Italy consisted of various forms of love-magic, which aimed to create, recover or destroy love between a man and a woman. This form of magic was more common in Italy than the bodily harm that was more common elsewhere.¹² One of the earliest such trials was in Pistoia in 1250, in which a servant-woman from Bologna was prosecuted by inquisition for putting spells (*facturas*) on her master such that he could not have sex with

⁷ *Statuti del comune di Ivrea*, ed. G. S. Pene-Vidari (3 vols., Turin, 1968–74), p. 95 (1433); *Capitula, statuta et ordinamenta [civitatis Ast]* (1534), p. 36 (1379).

⁸ *Statuta floride et alme civitatis Cesene*, clause 28. ⁹ *Statuta et decreta communis Genuae*, fol. 25v.

¹⁰ On various occasions consultants denied that the death penalty, prescribed by the *lex Cornelia* for acts preparatory to poisoning, was applied in Italian custom: Lucchesi, *Si quis occidit*, pp. 106–13.

¹¹ Dean, *Crime in Medieval Europe*, p. 128 (for a case in Florence, 1374); Bratchel, *Lucca, 1430–1494*, p. 149. In Bologna in 1405 a slave-woman was burned to death for killing her master's child: ASBo, Curia del Podestà, Inquisitiones, busta 286, reg. 4, fol. 65.

¹² R. Kieckhefer, *European Witch Trials: Their Foundations in Popular and Learned Culture, 1300–1500* (London, 1976), pp. 48, 56–7.

his new wife, and became stupid (*fatuus*).¹³ A Venetian woman confessed in 1271 to practising various forms of harmful magic against her husband.¹⁴ Another case is documented at Fiesole in 1298, in which a complex set of personal relations generated an accusation of bewitchment in the bishop's court. This case involved a husband and wife, the husband's father and his mistress, and the wife's father. It was this last who accused the mistress of bewitching his daughter such that she fled from her husband's house soon after marrying him, leaving the marriage unconsummated.¹⁵ This was a classic type of sorcery, found throughout the central and later Middle Ages. In all of these cases, the documents are very sparing in describing the magic used and in how it was learned and performed. They focus on the effects – the non-consummation, the 'infatuation' – and are less concerned about the means. Fourteenth-century prosecutions tend, conversely, to focus increasingly on the means and pay less attention to the actual effects, as if the criminal activity resided more in the use of spells and charms than in the harmful or beneficial changes brought about by them.

One of the earliest documented cases to offer greater detail comes from Perugia. This is the trial in 1347 of Riccola da Pisa.¹⁶ She practised two types of spell. One involved a black hen's egg, the other some unnamed herbs. The hen's egg was cooked, 'conjured', and then divided into two, one part being fed to a cat, the other to a dog. This was used as a means of ending the love between a man and a woman: a female servant, in love with her master, used it against him and his wife; a mother used it to end her son's attraction to a girl whom she disapproved of; another servant-girl used it to end the friendship between her master and his business partner, who beat her and was trying to have her dismissed. The powdered herbs, on the other hand, were used to create love: a wife was told to place them on a spot that her husband would cross in the morning, the promised effect being that he would hate all women except her; another woman used it to ensure that a man would love her and marry her.

This is the earliest of eight cases of sorcery edited by Nicolini. The chronology and typology of these cases is interesting. After 1347, her next case does not fall until 1433. Six cases then follow in the three decades to 1462. The last case falls in 1501. There are questions of course about the composition of this group of cases: are they all the cases between 1347 and 1501?

¹³ L. Zdekauer, 'La condanna di una strega (1250)', *Bullettino storico pistoiese*, 26 (1924).

¹⁴ B. Cecchetti, 'La donna nel Medioevo a Venezia', *Archivio veneto*, 31 (1886), pp. 57–8.

¹⁵ D. Corsi, 'Una "maliarda" a Fiesole alla fine del Duecento', *Quaderni medievali*, 26 (1988).

¹⁶ U. Nicolini, 'La stregoneria a Perugia e in Umbria nel Medioevo', *Bollettino della Deputazione di storia patria per l'Umbria*, 84 (1975), pp. 30–8.

If not, do they fairly represent, in chronology, the totality of sorcery cases? On the assumption that the chronological pattern is accurate, how might we explain it? Plague is hardly of any help as an explanation (see below); the stimulus provided by preaching would seem a more likely cause of the resumption of the series in 1433. Secondly, the typology is complicated by the presence of a fraudster and a Jew. One prosecution concerned a trickster who pretended to know how to make spells and acted out some sham rituals by which he claimed to control demons. Tricksters, to whom I shall return shortly, pose some fascinating problems of interpretation. Then there is the prosecution of a female Jew, Bellaflora, for enchanting some water at a fountain. Allegedly, she went to the fountain, filled a bowl, then raised it in the air, spoke some 'devilish words' and threw the water over her womb. This looks like an innocent gesture, an act of washing perhaps, unwise in public, but not dangerous. It was, however, likely to be maliciously interpreted: there were echoes of well-poisoning, perhaps (the nearby town of Narni forbade Jews from living near fountains).¹⁷ It was more likely to be misinterpreted in this particular year: 1462, the date of foundation in Perugia of the first Monte di Pietà, a moneylending institution designed, in a tide of anti-Jewish sentiment, to bring to an end Christian dependence on Jewish moneylenders. In a year when the sweat and labour of poor Christians was saved from Jewish profiteering, water from a civic fountain – with all its connotations of life-essence – was felt to need protection from misuse by Jewish sorcery.

No other city, of those that have been studied, offers us quite the same chronological range. Cecchetti provides only two examples from the fourteenth century in Venice, but his study was probably not intended to be exhaustive.¹⁸ Brucker's ground-breaking article on sorcery in Florence spans the period from 1375 to 1427; Christine Meek's more recent survey of sorcery trials in Lucca covers 1346–1415.¹⁹ Both sequences break off before the enlargement of sorcery into witchcraft. Most of Brucker's cases involve love-magic: a woman places an enchanted waxen image of a man in his bed, with the effect that he neglects his wife and children and gives her a large sum of money; another woman places a charm in a neighbour's bed in the hope of winning his love, but causes him only physical pain in his heart; a third woman uses love-potions and spells, involving Christian prayers and sacred objects, to stimulate the passion first of her husband, then of her lover. Inducing love and hatred was also the alleged intent of a man who

¹⁷ A. Toaff, *The Jews in Umbria* (Leiden, 1993), p. xx.

¹⁸ Cecchetti, 'La donna nel Medioevo a Venezia', pp. 58–60 (1351 and 1389).

¹⁹ Meek, 'Men, women and magic'.

invoked demons, though he also used them to cause physical harm and (mainly) to exorcise evil spirits. Rather different is the man who was found carrying a human head away from a cemetery, and said that he wanted to use it to foretell the future. By contrast, only one of the Lucchese cases concerns simple love-magic: an ex-slave, Zita, also known as Maddalena the Greek, used a magic powder to rekindle the love of a merchant of Arezzo, whose concubine she had been. But thereafter she practised sorcery to assist other slave-women, not in any amorous affairs, but in attempts to mitigate the violence of their masters. She provided them with powders and potions, containing stereotypical materials such as menstrual blood, afterbirth and female body-hair, to mollify the attitudes and behaviour of these slave-owners. One of the other Lucchese cases concerns a hate-charm: a man visited a spell-maker in the hope of solving the domestic problems of a married couple living unhappily with the husband's father; if hate could be sown between father and son, his thinking seems to have gone, the latter might set up his own home and relieve the pressure on his depressed wife.²⁰

The clients of sorcerers often had very ordinary motives—love in marriage and out of marriage, gentler relations with in-laws, employers and owners—and that very ordinariness left them vulnerable to tricksters and swindlers. One of these fraudsters was captured in each of the three cities studied: Perugia, Lucca and Florence. Meek gives us the case of Franceschina da Roma from 1346.²¹ An obvious itinerant, she hailed from Rome, said she was living in Florence, and was arrested in Lucca. Her acts of sorcery seem to have been a cover for theft. She made out that she was a converted Jew performing a twenty-nine-year penance, imposed at the time of her conversion, of travelling the world curing people's ills. This she did using what she said were books of medicine. But the penance and the medical knowledge were ruses to fool clients into providing her with food and clothes (for use in the magic) and to gain access to their houses in order to steal. In Perugia, Giacomo da Pisa, hearing that a girl was bewitched, pretended to know how to remove spells, and offered to liberate this girl for a fee. In return for an improvised, fake spell, involving nothing more than some black cloths and a jar of water, he earned living expenses for two months, a sum of money and a linen shirt from the girl's mother. He repeated this trick, or similar ones, on other clients.²² Florence provides us with the activities of Giovannino da Torino, who persuaded men to pay him in return for arranging for 'demons to carry a large sum of money through the air into their hands'. Similar fraudsters are found elsewhere

²⁰ Ibid., pp. 51–63.

²¹ Ibid., pp. 44–6.

²² Nicolini, 'La stregoneria a Perugia', pp. 40–3.

too: in Savoy in 1380, one 'maestro Antonio' of Moncalieri was tried in the church court for using a charm (a pan of holy water, twelve candles, signs of the cross) to find a woman's lost string of pearls; this man confessed that he knew nothing of necromancy and had invented his action in order to cheat the woman out of two florins.²³

These cases raise the interesting issue of the relation between the simulated and the real.²⁴ Assuming that Franceschina or Giacomo or Giovannino were actually simulating – and not subsequently in court pretending to pretend, in a clever defence tactic – suggests that the judge and his informants could distinguish between make-believe and magic, or thought they could.²⁵

People pretending to be Jewish – such as Franceschina da Roma – might be considered a category on their own. Another case arose in Bologna in December 1363. One Pasquale da Venezia, a vagabond, confessed that he had gone to a house in the city pretending to be a converted Jew and to know many remedies for curing bodily infirmities, particularly 'if a woman cannot have sex with her husband, or if there is some disagreement between husband and wife'. In this instance, it was said, a baker's daughter, Bartolomea, was not on good terms with her husband. Her father had asked Pasquale to practise his cure on her. So Pasquale came to the father's house, where he insisted on performing the cure in a 'secret and secluded place' in which no one could see or hear him, for if any people did overhear or watch, he said, the infirmity would only be translated to them. He was accordingly left with Bartolomea in a private place. There he put her on his knees, raised her clothes, put one hand on her genitals and the other on her breasts, and put his tongue in her mouth. Bartolomea soon realised that she was being deceived, and prevented this 'cure' going any further by resisting and crying out, such that other members of the house intervened. As a punishment, Pasquale was whipped and his tongue was cut out.²⁶ From the point of view of the Christian family, the ease with which a concerned father approached the 'Jew' and brought him to his house, and the lack of suspicion, both speak of hospitable relations between Christians and Jews. This was possible in the mid-fourteenth century, but would become difficult if not impossible in the next century, when there was greater anxiety

²³ L. Cibrario, *Della economia politica del Medio Evo* (2 vols, Turin, 1861), vol. 1, pp. 289–90.

²⁴ J. Baudrillard, 'Simulacra and simulations', in *Selected Writings*, ed. M. Poster (Oxford, 1988).

²⁵ In Sicily in 1435 judges investigated some people they described as 'pretending to be possessed by evil spirits': Ryder, 'The incidence of crime in Sicily in the mid fifteenth century', p. 69.

²⁶ ASBo, Curia del Podestà, Inquisitiones, busta 199, fol. 53-v.

about letting Jews near to female Christian flesh (see above, p. 149) and an anxiety regarding Jewish witchcraft.²⁷ From Pasquale's point of view, he was adopting a persona that was credible and desirable: Jews had a reputation for medical knowledge, and there was a widespread need for solutions to matrimonial and sexual difficulties, as seen in the example of Maddalena the Greek. The figure of the passing Jew who could provide remedies for ailments was one that entered contemporary fiction,²⁸ though in this case the father acceded to Pasquale's demand for privacy presumably because he assumed some secret spell was involved.

This nonchalant attitude to magic is found in the fictional tales, where the theme of magic is contained within the tradition of the trick or *beffa*. A priest pestering a woman for sex tries to obtain some of her pubic hair in order to perform a spell, but she sends him hair from her pig, and when the spell is performed, the pig breaks out of its pen and pursues the priest through the church.²⁹ In *Decameron* VIII.7, a jilted lover takes his revenge on his disdainful beloved – who kept him waiting all night in the snow – by instructing her to recite some nonsense-writing naked at night; and in IX.5, more phoney magic forms part of a prank played on the simpleton Calandrino. Bogus pretend-magic is practised by other tricksters and pranksters, for example the dog-turds sold by Gonnella, in a tale by Sacchetti,³⁰ or the counter-magic done to a woman who believes she has been bewitched,³¹ or the fake 'necromancer' who uses a sham 'creature from hell' to extract gifts of food from a frightened nobleman.³² In all of these cases, magic is equated with trickery or extortion, or a means of keeping a parent distracted while the protagonist has sex with the daughter. The only time the magic works is when it is practised on a pig.

The earliest prosecution to combine traditional love-magic with the new charges of diabolism and child-blood-sucking is the famous case of Matteuccia of Todi from 1428.³³ Matteuccia was charged with many counts of sorcery: twelve counts of love-magic, mostly for battered or neglected wives who wanted to restore love to their marriages; three counts of releasing people from phantasms and spells; and two counts of curing infirmities. To these were added the charge that she used an ointment made from blood

²⁷ Toaff, *Il vino e la carne*, p. 152. ²⁸ Sacchetti, *Il Trecentonovelle*, no. 218.

²⁹ Sercambi, *Novelle*, no. 36. ³⁰ Sacchetti, *Il Trecentonovelle*, no. 210.

³¹ Sabadino degli Arienti, *Le Porretane*, no. 25. ³² Masuccio Salernitano, *Novellino*, no. 20.

³³ D. Mammoli, *Processo alla strega Matteuccia di Francesco, 20 marzo 1428* (Todi, 1969). And see discussion by F. Mormando, *The Preacher's Demons: Bernardino of Siena and the Social Underworld of Early Renaissance Italy* (Chicago, 1999), pp. 72–7.

of bat and suckling-child to conjure up a demon in the form of a goat, on which she flew to a demonic wedding, where she and other witches received instructions from Lucifer to go out into the world and destroy babies. There follow six charges of sucking the blood of babies asleep in their cots. As Ginzburg has said, these latter charges were 'diabolic incrustations', signs of a 'forced glissade' of old beliefs towards 'the Sabbath stereotype'.³⁴ Their immediate origin is clear: the sermons of San Bernardino of Siena, who gained his knowledge about witches from Franciscans working in Piedmont, and preached at Todi just two years before the trial of Matteuccia.³⁵ Bernardino had also prompted the burning of a witch in Rome in 1426.³⁶

San Bernardino's sermons on witchcraft did not always have this effect – they failed in Siena in 1427³⁷ – but it is in the years following the case of Matteuccia that we start to find records in the chronicles of the burning or execution of witches: the wife of a Florentine man burned 'as a witch' in Siena in 1437; a blind man and a mason's wife burned in 1445;³⁸ a 'diabolical enchantress' in Ferrara, 1454;³⁹ a priest-necromancer rescued from decapitation by some Bolognese youths in 1452; a notary's wife burned in a spectacular bonfire in 1498.⁴⁰ According to one Bolognese diarist, the notary's wife had cured people for money, having first caused them harm, and her patients included princes and aristocrats (several members of the Bentivoglio family are named, as well as the wives of members of the Gonzaga of Mantua and the Rangoni of Modena). Her body was burned to ash in a literally explosive extinction of both her and the tools of her trade. By now the 'diabolic incrustations' almost completely obscure the mere sorcery – as in the execution in 1480 of Maria da Vicenza, called 'medica', in which the various accusations of devil-worship swamp the references to her actions as a provider of medicines and remedies; the fairly innocuous use of holy oil to find treasure or to bring love between husband and wife is outclassed by the attendance at a devil's sabbat (here called 'ludum'), at

³⁴ C. Ginzburg, *Ecstasies: Deciphering the Witches' Sabbath* (London, 1990), pp. 96–7. Thus also Kieckhefer, *European Witch Trials*, pp. 27–44.

³⁵ C. Ginzburg, 'Deciphering the Sabbath', in *Early Modern European Witchcraft: Centres and Peripheries*, ed. B. Ankarloo and G. Henningsen (Oxford, 1990), p. 132.

³⁶ Mormando, *The Preacher's Demons*, pp. 54–70.

³⁷ B. Paton, "'To the fire, to the fire! Let us burn a little incense to God': Bernardino, preaching friars and maleficio in late medieval Siena", in *No Gods Except Me: Orthodoxy and Religious Practice in Europe, 1200–1600*, ed. C. Zika (Melbourne, 1991).

³⁸ *Cronache senesi*, pp. 850, 857.

³⁹ W. L. Gundersheimer, 'Crime and punishment in Ferrara, 1440–1500', in *Violence and Civil Disorder in Italian Cities, 1200–1500*, ed. L. Martines (Berkeley, 1972), p. 121.

⁴⁰ *Corpus chronicorum bononiensium*, vol. 4, pp. 181, 554–5; *Diario bolognese di Gaspare Nadi*, ed. C. Ricci and A. Bacchi della Lega (Bologna, 1886), p. 238.

which she delivered the blood of bewitched boys or beasts, and had sex 'ante et retro'.⁴¹

The chronology of the transition from sorcery to witchcraft is difficult to piece together. Different historians place the moments of decisive change at different times. There is general agreement that in the thirteenth century sorcery was a minor concern. The Church's inquisitors were more interested in heresy, and the secular courts imposed only small fines. There was, moreover, no uniform transition to a more punitive regime. In Fossano (Piedmont) in 1336 two women were burned to death for spells (and for other unnamed offences).⁴² However, in Savoy well into the fourteenth century, fines were still being imposed, for example on a woman for sorcery using the stars, or on a man for causing a storm using books of necromancy.⁴³ Of seven cases at Pinerolo between 1300 and 1336, all were punished by money-fine except for one woman who was burned in 1320, but her offence was compounded by her escape from jail.⁴⁴ The period from 1280 to 1330 has nevertheless been identified by Romanello as marking a decisive turn, with a series of decisions by the popes and the inquisition increasingly assimilating sorcery to heresy.⁴⁵ Romanello then interprets the social, political and judicial conditions of the mid-fourteenth century – the increased powers of the inquisition, the repression of outsiders, the socio-economic crisis and reduced faith in the Church – as allowing the consequences of this assimilation to flow, creating many of the key elements later found in witchcraft trials, such as the adoration and cult of the devil, flying in the entourage of a goddess, and the witches' sabbat. Cardini too points to conditions after the Black Death as stimulating the use of magic. One effect of the plague, he argues, was to steepen the inclination to seek refuge in sorcery against fear and insecurity, and this was of a piece with heightened distrust of strangers, new heretical movements and social revolts.⁴⁶ Ginzburg suggests that 'the prodigious trauma of the great pestilences intensified the search for a scapegoat on which fears, hatreds and tension of all kinds could be discharged'.⁴⁷

⁴¹ *Le cronache bresciane inedite dei secoli XV–XIX*, ed. Guerrini, vol. 1, pp. 183–5. See discussion of this in S. Bowd, "'Honeyed flies' and 'sugared rats': witchcraft, heresy and superstition in the Val Camonica, 1455–1535", in *Superstition in Historical and Comparative Perspective*, ed. A. Knight and S. Smith, forthcoming.

⁴² U. Santini, 'Gli statuti di Fossano', *Bollettino storico-bibliografico subalpino*, 12 (1907), p. 52.

⁴³ Cibrario, *Della economia politica del Medio Evo*, vol. 1, p. 289.

⁴⁴ F. Gabotto, 'Le streghe di Buriasso e di Cumiana (1314–1336)', *Bollettino storico-bibliografico subalpino*, 9 (1904), pp. 310–14.

⁴⁵ *La stregoneria in Europa (1450–1650)*, ed. M. Romanello (Bologna, 1975), pp. 8–15.

⁴⁶ F. Cardini, 'Magia e stregoneria nella Toscana del Trecento', *Quaderni medievali*, 5 (1978), pp. 129–33.

⁴⁷ Ginzburg, 'Deciphering the Sabbath', p. 124.

Ginzburg indeed sees the mid-fourteenth century as the period when the schema of the diabolic Sabbath was forged out of the raw materials of three separate, pre-existing ideas: first, the notion of hostile groups conspiring against society (found in the 1321 well-poisoning allegations, and revived at the time of the Black Death); secondly, learned beliefs in sects inspired by the devil, who renounced the Christian faith and profaned holy objects and practices; and thirdly, folk beliefs in men or women who travelled to the land of the dead, or who belonged to the company of a 'good lady' and took part in crowded nocturnal merry-making, where they learned the secrets of the future or the techniques of curing diseases, finding stolen objects and dissolving spells.⁴⁸

There are problems in interpretations that focus on the mid-fourteenth century. The relation of trials to social context depends upon a generalised crisis, often written up in sensational terms.⁴⁹ It has been rightly pointed out that there were insecurities enough in periods of economic and demographic vitality.⁵⁰ It is also difficult to relate the form of magic most often prosecuted, namely love-magic, to forms of economic or psychological insecurity (were Nanna or Barbarina insecure in either of those senses?). There is the further problem of chronological gaps. First, the gap between the mid-fourteenth century and the first prosecutions for diabolic witchcraft in the 1420s: if the schema of the diabolic witch was forged in the mid-fourteenth century, why was there no earlier prosecution? Secondly, the gap within the fourteenth century: Brucker in his study of sorcery in Florence revealed that there was no case in the secular court between 1343 and 1375.⁵¹ A similar gap is also visible at Pinerolo and possibly at Perugia.⁵² Kieckhefer noted that the central decades of the fourteenth century saw a lower rate of prosecutions everywhere.⁵³ These gaps suggest that, at the very moment when the impact of plague was at its highest, concern about sorcery was at its lowest. An explanation in terms of plague thus seems ill adapted both to the nature of the transformation (from love-magic to baby-killing) and to its timing (the 1420s). As John Larnier observed, in reviewing a book that tried to link plague to increasing numbers of adultery cases: 'What, one reflects, have these plagues not explained?'⁵⁴

⁴⁸ Ibid., pp. 122–32; Ginzburg, *Ecstasies*, pp. 92–3.

⁴⁹ As in H. Sidky, *Witchcraft, Lycanthropy, Drugs and Disease: An Anthropological Study of the European Witch-Hunts* (New York, 1997), pp. 77–8, 85–91. Contrast the more cautious, indeterminate approach of Kieckhefer, *European Witch Trials*, p. 19.

⁵⁰ R. Muchembled, *La sorcière au village (XVe–XVIIIe siècle)* (n.p., 1979), p. 23.

⁵¹ G. A. Brucker, 'Sorcery in the Renaissance', *Studies in the Renaissance*, 10 (1963), pp. 8–9.

⁵² Gabotto, 'Le streghe di Buriasco', p. 314; Nicolini, 'La stregoneria a Perugia', pp. 30–9.

⁵³ Kieckhefer, *European Witch Trials*, pp. 15–16. ⁵⁴ *History*, 71 (1986), p. 141.

Part of the problem here is that historians measure different objects: Romanello, papal decisions and inquisitorial writings; Cardini, actual resort to witches (though it is not clear what sources he can possibly have used); Brucker, trials in the secular court (which was not the only forum for such prosecutions). In this circumstance, both the precise evolution of prosecution and its link to social context remain unclear. What is clear, however, is that a double transition took place between the thirteenth and the fifteenth centuries, first in penalisation, then in conceptualisation of the offence. Penalties became more severe: fines became heavier, were then replaced or accompanied by shaming and corporal penalties, and finally gave way to the death penalty. The nature of the crime was reconceived: from using magic to help lovers, find objects, or cure illness, to witchcraft involving devil-worship and baby-killing. And preaching, not plague, seems to be the dynamic factor.

Violence

A trend in recent historiography of crime sees violence as not mindless or indiscriminate, but as following certain ‘rituals of confrontation’, in which the procession from verbal argument to an exchange of blows, and maybe death, was carefully graduated.¹ The following example shows this graduated process at work in Italy. In 1290 on the island of Torcello, near Venice, Giovanni, from Altino, and Bartolomeo from Mazzorbo, came to blows over an unsettled debt. Giovanni came to Bartolomeo’s house and demanded payment. Bartolomeo insulted him, saying ‘Look at this know-all threatening me in my own house!’ Bartolomeo seized him by his hood, and said ‘If I did not respect my lord’s honour, I would throw you into the water.’ He also drew his bread-knife and said ‘If it wasn’t for the fact that I don’t want to incur a fine, I’d give you a roughing-up.’ At this point, another man intervened to separate them. Only at this point did Giovanni draw a weapon (not a bread-knife but a ‘cultellum a feriendo’).² The sequencing and syntax of these exchanges reveals the participants following a script that stresses their restraint and their invitation of intervention by mediators. Bartolomeo’s first insult calls for an audience (‘Look’). His threats of violence are highly conditional (‘If I didn’t . . .’, ‘If it wasn’t . . .’). His actual violence is mild, grasping his opponent’s clothing, drawing a bread-knife. In response, it is only after the mediator has appeared on the scene, when the danger of a bloody brawl has passed, that Giovanni pulls out a real weapon.

The realisation that confrontations were ritualised in this way helps historians to a better understanding of the apparently monotonous record, in trial documents, of mundane acts of violence. It has often been argued, for example, that everyone carried a knife in the later Middle Ages, and that knives were drawn and wounds inflicted at the slightest provocation. It was

¹ C. Pythian-Adams, ‘Rituals of personal confrontation in late-medieval England’, *Bulletin of the John Rylands Library*, 73 (1991); Gauvard, ‘*De grace especial*’, pp. 707–45.

² *Podestà di Torcello Domenico Vigliari (1290–1291)*, ed. P. Zolli (Venice, 1966), pp. 9–10.

'a world of thin skins, short fuses and physical violence',³ 'a society quick to come to blows',⁴ 'an age characterized by rapid resort to violence',⁵ in which force was 'a means of regulating daily tensions'.⁶ In previous publications, I have drawn attention to the unsatisfactory nature of these views, particularly their historiographical genealogy and gender bias.⁷ Here I wish to add simply some evidence from the law-courts regarding the use of weapons. Take the cases of violence prosecuted in Lucca in 1365. Some of these were trivial. One man was pushed to the ground and cut a finger.⁸ In a dispute among a group of hunters over the distribution of game, one man was slapped in the face with a piece of meat and blood ran from around his eyebrow.⁹ A man caused a girl to fall over as she ran towards him, and she grazed her knee.¹⁰ Of a total of forty-four assaults, twelve involved the use of no weapon or object of any kind, the injury being inflicted with fists or feet, hands or fingernails. A further fifteen perpetrators used sticks or stones. Improvised weapons – a vase, an iron tool, a wooden panel – feature in a small number of cases. Where real weapons are present, blows are sometimes dealt with their handles, not their blades: this is a further aspect of the graduated exchange of violence. Out of forty-four cases, just two injuries were inflicted by sword-blades, and one each by a lance and an axe.¹¹

This pattern is also evident in other cities in the fourteenth century. In Bologna in 1351, a clear division is offered in the trial records between violence by citizens or long-term inhabitants of the city, and violence by soldiers or foreigners. Citizens and residents threw punches, used sticks or stones to inflict blows to the head, pushed people to the ground such that they injured their heads, bit, kicked and dragged.¹² They more rarely used knives

³ Lesnick, 'Insults and threats in medieval Todi', p. 72.

⁴ Bonfiglio Dosio, 'Criminalità ed emarginazione a Brescia nel primo Quattrocento', p. 138.

⁵ W. M. Bowsky, 'The medieval comune and internal violence: police power and public safety in Siena, 1287–1355', *American Historical Review*, 73 (1967), p. 3.

⁶ R. Roque Ferer, 'L'infrazione della legge a Cagliari dal 1340 al 1380', *Quaderni sardi di storia*, 5 (1985–6), p. 9.

⁷ T. Dean and K. Lowe, 'Writing the history of crime in the Italian Renaissance', in *Crime, Society and the Law*, pp. 4–5; *Crime in Medieval Europe*, p. 22.

⁸ ASLu, Podestà di Lucca, 4896, 11 May. ⁹ *Ibid.*, 3 May. ¹⁰ *Ibid.*, 7 Feb.

¹¹ *Ibid.*, 13 Jan., 30 March, 29 May, 11 June. The axe, thrown not wielded, merely cut the victim's thumb.

¹² Over fifty cases: ASBo, Curia del Podestà, Inquisitiones, busta 171, reg. 2, fol. 43; reg. 3, fols. 71, 80; reg. 6, fols. 12, 20; reg. 7, fols. 11, 20, 28, 38, 50, 69, 75; reg. 8, fols. 3, 6, 17, 25, 46, 57; reg. 9, fols. 15, 18, 27, 80; reg. 12, fols. 14, 23, 27; busta 172, reg. 2, fol. 19; reg. 3, fols. 8, 11; reg. 5, fols. 14, 17, 19, 22; reg. 6, fols. 12, 14; reg. 7, fols. 6, 15; reg. 8, fols. 9, 11v, 14, 19, 25; reg. 10, fols. 16, 23, 60, 66; reg. 11, fol. 14; reg. 12, fols. 3, 39, 87, 90; reg. 13, fols. 3, 12, 25.

or swords.¹³ It was the soldiers, Germans and Lombards mostly, who struck with swords and knives, causing bloody wounds to heads and shoulders, legs and arms, or leaving their victims close to death.¹⁴ It was soldiers who were prosecuted for the three rape cases in the city: a Milanese soldier tried to rape a young girl in the suburbs; one from Alessandria tried, with a local man, to rape a widow; and, most disturbingly of all, a German bought a seven-year-old girl from her mother in order to 'devirginate' her.¹⁵ In addition, soldiers were responsible for one of three rape cases from the *contado*.¹⁶ Moreover, it was soldiers and foreigners who were prosecuted for most of the fourteen homicides in the city. The soldiers came from Germany, Milan and other parts of the Visconti dominion, the foreigners from Florence, Milan, Bergamo.¹⁷ The only local killers were a gambler ('who is always gambling on the steps of the communal palace'), and a man and woman of Bologna.¹⁸ Things were, however, somewhat different in the countryside, with what looks like a greater readiness among residents to use weapons – knives, swords, lances – in both assault and homicide.¹⁹

Much the same pattern is evident at Reggio Emilia in 1373–4, when it too was under Visconti rule. Of over fifty cases in the Podestà's court between June 1373 and May 1374, eighteen were assaults or homicides by foreign soldiers in the city, and a further dozen were injuries inflicted by other foreigners, mainly from Germany and Lombardy.²⁰ The citizens and inhabitants of Reggio were responsible for a further dozen assaults,²¹ but, as in Bologna, they tended to use fists, stones and sticks, whereas the soldiers tended to use swords and knives. The militarisation of political power seems to have been accompanied by a disarming of the citizenry.

¹³ Fourteen cases: *ibid.*, busta 171, reg. 2, fol. 58; reg. 7, fol. 45; reg. 9, fols. 42, 72; reg. 12, fol. 36; busta 172, reg. 7, fol. 3; reg. 9, fol. 15; reg. 10, fols. 6, 36, 38, 43; reg. 11, fol. 38; reg. 12, fol. 58; reg. 13, fol. 16.

¹⁴ Twenty-eight cases: *ibid.*, busta 171, reg. 3, fol. 86; reg. 6, fols. 41, 43; reg. 7, fols. 5, 14, 17, 73, 79; reg. 9, fols. 39, 77; reg. 10, fols. 41, 48; reg. 12, fols. 17, 25; busta 172, reg. 2, fol. 16; reg. 5, fol. 33; reg. 6, fol. 24; reg. 7, fol. 63; reg. 9, fol. 39; reg. 10, fols. 20, 55; reg. 11, fols. 42, 45; reg. 12, fols. 41, 49, 74, 76, 92. Victims left close to death: busta 171, reg. 6, fols. 41, 43; reg. 9, fols. 31, 35.

¹⁵ *Ibid.*, busta 171, reg. 2, fols. 60, 61v; reg. 9, fol. 60; busta 172, reg. 2, fol. 52.

¹⁶ *Ibid.*, busta 172, reg. 2, fol. 25; reg. 11, fol. 48; reg. 12, fols. 43, 65.

¹⁷ *Ibid.*, busta 171, reg. 1, fol. 63; reg. 2, fol. 55; reg. 6, fols. 23, 41; reg. 7, fol. 8; reg. 8, fol. 43; busta 172, reg. 2, fol. 16; reg. 7, fol. 43; reg. 8, fol. 33; reg. 9, fol. 39; reg. 11, fol. 42.

¹⁸ *Ibid.*, busta 171, reg. 1 fol. 43; busta 172, reg. 6, fol. 3 and reg. 7, fol. 3.

¹⁹ *Ibid.*, busta 171, reg. 7, fol. 77; reg. 8, fol. 54; reg. 9, fols. 8, 12; reg. 12, fols. 33, 44, 48; busta 172, reg. 5, fol. 11; reg. 8, fols. 28, 34; reg. 10, fols. 46, 51; reg. 11, fol. 5; reg. 12, fols. 22, 34; reg. 14, fol. 5; reg. 14, fol. 33.

²⁰ ASRe, Archivi giudiziari, Curie della città, I, 16/1, fols. 3, 7, 9, 11, 17, 20, 25v, 27, 29, 30 and 23 Jan., 24 Jan., 22 Feb., 25 Feb., 5 March, 17 March, 18 March, 20 March, 5 April, 9 April, 6 May, 10 May, 11 May, 27 May.

²¹ *Ibid.*, fols. 13, 22, 34 and 4 March, 5 May, 28 Dec., 10 Jan., 14 Jan., 1 March, 16 March, 19 March, 18 April.

A further feature of violence is its containment within certain social barriers.²² In Bologna in 1450, where the indictment indicates the social status of both aggressor and victim, it is clear that prosecuted violence rarely ascended or descended the social scale. Where it did, we find townsmen fighting with field labourers; a member of a city family punching a female slave fetching water; a peasant insulting a citizen; some employers hitting their servants; field labourers attacking city traders or professionals; and one servant killing his master.²³ There are also a few cases of assaults on officials (at the city gates or in rural castles) and on the agents of city landowners.²⁴ On the whole, however, violence is contained socially within strata, categories and milieux. Artisans assault their fellow craftsmen; women fight women; Germans brawl with Germans; a beggar strikes another beggar; pimps wound other pimps or prostitutes; and inhabitants of the same village cut and kill each other.²⁵ Trials in Lucca in 1450 show the same prosecution of violence within rather than between social groups: between slaves, between Germans or other foreigners, between women, between servants, between practitioners of the same trade or neighbours in the same village.²⁶ When violence crosses status boundaries, it does so along just a few paths: the violence of husband against wife, of men against prostitutes, of men or women against local officials or agents and servants of the Podestà.²⁷

Statutes differentiated penalties for violence in two ways. First, each major type of violence was subdivided according to the type of weapon used, the location of any injury on the body, the presence or absence of bloodshed, the permanence of any injury or debility, and the status of the culprit and the victim. The types of violence ranged from aggressive behaviour (*insultus*), blows (*percussio*) and wounding, to fights between two or three persons (*rissa*) or larger groups (*sturmo*). Those involved might be citizens or inhabitants of the city, *contadini* or foreigners. If weapons were used, they might be those specifically forbidden by law, other bladed weapons, or other objects such as stones or staves; if weapons were not used, statutes distinguished between injuries inflicted by slaps, punches and kicks. The body was broadly divided by statutes into three zones: the face, the

²² As also found elsewhere in the fourteenth century: Roque Ferer, 'L'infrazione della legge a Cagliari', p. 21; Cohn, 'Criminality and the state in Renaissance Florence', p. 218.

²³ ASBo, Curia del Podestà, Inquisitiones, busta 355, reg. 1, fols. 97, 119, 129; reg. 2, fols. 78, 84, 124, 136; reg. 3, fols. 68, 99, 203, 221, 259.

²⁴ Ibid., reg. 1, fols. 87, 147; reg. 2, fols. 64, 116.

²⁵ Ibid., reg. 1, fols. 55, 67, 72, 109, 115, 121, 129, 140, 150; reg. 2, fols. 20, 31, 36, 72, 82, 92, 94, 103, 105, 107, 117, 130, 158, 161.

²⁶ ASLu, Podestà di Lucca, 5251, fols. 43, 36, 68, 95; 5252, 16 July, 31 July, 31 Aug., 18 Sept.

²⁷ Ibid., 5251, fols. 71, 93, 94, 96; 5252, 24 July, 17 Aug., 19 Aug., 14 Dec.

body above the neck and the body below the neck, in descending order of importance. If permanent injury was caused, this could be scarring, in which case its visibility was a criterion, or it could involve debility or loss of limb. To give one example of this elaborate costing of injury: Cesena decreed different penalties for over a dozen different injuries without weapons, namely a punch to the face, a slap to the face, a kick to the face, punches or kicks to other parts of the body, biting or scratching the face, biting or scratching elsewhere on the body, seizing by the beard and extracting hairs, seizing by the hair and dragging along the ground, pushing into a dung-heap, knocking off or seizing a hat, tearing or spitting on clothes, pushing to the ground, grasping by the throat, and spitting in the face.²⁸

The second differentiation increased penalties for violence committed in certain places, at certain times, against certain victims, or with certain intentions (aggravating circumstances).²⁹ Florence's fourteenth-century statutes laid down double penalties for crimes in the market-place, on bridges, in the Palaces of the commune, the bishop or the Priors, or in any church; for crimes during sermons, funerals or weddings, or at night; and for disproportionate revenge, such as avenging a slap with a blade wound.³⁰ Other cities had similar lists of 'special' places, persons and periods. Perugia, for example, protected its piazza with quadruple penalties, and Holy Week and numerous feast days with increased fines.³¹ Arezzo appointed double penalties for crimes against anyone going to or from a council meeting, anyone being shaved, anyone attending the horse fair in March and April, and so on.³² Everywhere crimes at night-time attracted heavier penalties.

This sort of tariff-justice led to all sorts of problems of definition. The statutes of Ascoli Piceno define 'the face' and 'a foreigner';³³ those of Asti, Fabriano and Padua define 'insultus' (i.e. assault), 'so that *insultus* and *percussio* are not confused' in the words of the Paduan law.³⁴ The definitions of assault in these three cities are, perhaps predictably, different, though they share the elements of aggressive movement, intent and anger: 'rushing at someone by moving with angry intent or threatening or chasing' (Padua); 'moving or running against someone with malicious or angry intent and with a sword, stick, stone or other object that might inflict injury' (Asti); 'only by hitting, drawing a weapon, or chasing and pursuing the other

²⁸ *Statuta floride et alme civitatis Cesene*, clause 31.

²⁹ Pertile, *Storia del diritto italiano*, vol. 5, pp. 153–63. ³⁰ *Statuto del Podestà dell'anno 1325*, p. 184.

³¹ *Statuti di Perugia dell'anno MCCCXLII*, vol. 1, pp. 92–4. ³² *Statuto di Arezzo (1327)*, pp. 216–17.

³³ *Statuti di Ascoli Piceno dell'anno MCCCCLXXVII*, pp. 102, 116.

³⁴ *Statuta patavina*, fol. 105 (1329); *Lo statuto comunale di Fabriano (1415)*, pp. 130–1; *Capitula, statuta et ordinamenta [civitatis Asti]*, fol. 24.

person' or going 'with angry and malicious intent to someone's house and shouting "Come out, thief!", or "Why don't you come out?", or pushing and breaking the door, or entering the house, or throwing stones against it' (Fabriano). Elsewhere, the status of the bread-knife (is it a forbidden weapon?) is felt to need definition.³⁵ 'What is a scar?' is the starting point for a juristic discussion, in which the criteria of visibility, permanence and shamefulness are proposed.³⁶ 'What is night-time?' is another debated question, the problem being to define precisely when it starts and finishes.³⁷ Bartolus was asked to give an opinion on whether a finger counted as a 'limb',³⁸ while the statutes of Belluno declared that noses and eyes counted as limbs.³⁹ These were not mere academic debating points: the fines for cutting off a limb or for assaults at night-time, with scarring or with a forbidden weapon were heavier. How, and how far, the vocabulary of the law – *insultus*, bread-knife, scar – fitted the evidence before the court was of importance to judge and defendant alike. And this sort of issue arises in court cases, as defendants tried to redefine themselves and their victims so as to incur a lighter penalty. In Lucca, where the penalties for violence were halved if the perpetrator were a citizen and the victim a foreigner, but doubled or quadrupled in the reverse situation, defendants tried to ensure a lighter penalty by producing claims and evidence of their civic status. Thus, some cases for stabbing or wounding revolved around the defendant's claim to be a citizen or resident of the city. Is a man from Montecatino who has lived in Lucca for fifteen years, exercising his trade and doing his civic duties, still a 'foreigner' or does he qualify as a 'resident'?⁴⁰ Is a man who was born in Lucca, but who is called Giovanni 'from Todi', a citizen?⁴¹ Do the terms 'Florentine' and 'of Florence' signify citizenship, origin or residence?⁴²

³⁵ *Capitolare dei Signori di notte*, ed. Nani Mocenigo, pp. 23–4 (1276); *Statuta patavina*, fol. 124v (1281).

³⁶ A. Campitelli, 'Il *Tractatus de cicatricibus* di Francesco Alberghotti attribuito a Bartolo da Sassoferrato', *Annali di storia del diritto*, 8 (1964).

³⁷ S. Caprioli, 'La miscellanea romana dell'Archivio di Stato (MS 1004)', in G. D'Amelio, A. Campitelli, S. Caprioli and F. Martino, *Studi sulle 'quaestiones' civilistiche disputate nelle università medievali* (Catania, 1980), p. 127; Kantorowicz, *Albertus Gandinus*, vol. 2, pp. 254–5; Zordan, *Angelo Gambiglioni*, pp. 198–200. See also M. Sbriccoli, 'Nox quia nocet: i giuristi, l'ordine e la normalizzazione dell'immaginario', in *La notte: ordine, sicurezza e disciplinamento in età moderna*, ed. M. Sbriccoli (Florence, 1991).

³⁸ *Consilia Bartoli*, *consilium* 201. The answer 'no'. See also Pertile, *Storia del diritto italiano*, vol. 5, p. 596.

³⁹ *Statuti di Belluno del 1392*, ed. Bacchetti, p. 286.

⁴⁰ ASLu, Podestà di Lucca, 5042, 16 Dec. 1385. A similar case: *Capitano del popolo*, 36, fols. 22–42 (1477).

⁴¹ *Ibid.*, 5268, fol. 90 (1458).

⁴² J. Kirshner, 'A *consilium* of Rosello dei Roselli on the meaning of "Florentinus", "de Florentia" and "de populo"', *Bulletin of Medieval Canon Law*, 6 (1976).

Despite the very precise measuring of the penalties for violent crime, some acts of violence were excepted from this scheme: broadly speaking, violence used in discipline, retaliation or resistance, and violence against 'infamous' persons.⁴³ At Asti, the penalties for violence applied unless the victim was a thief, bandit, pauper or prostitute (the infamous), or the violence was delivered by older kinsmen to younger (discipline), or in self-defence (resistance).⁴⁴ Statutes routinely include a clause permitting husbands to use violence to 'correct' their wives, and likewise fathers their children and masters their servants, though often this right of chastisement was limited to blows that fell short of drawing blood or causing permanent injury. 'Parents can with impunity hit, beat and chastise, at their pleasure, their sons, grandsons and great-grandsons'; thus also brothers their sisters, husbands their wives, concubines and prostitutes, lords and mistresses their servants, and masters their pupils, provided that they do not kill or wound.⁴⁵ Violence against intruders was explicitly countenanced. There was no penalty for killing a 'thief in the night', found furtively in the house, or a would-be adulterer.⁴⁶ According to the Paduan statutes, 'vile persons' found on private property could be seized, beaten, taken to the Podestà and prosecuted, as if intent on an 'enormous' crime.⁴⁷ An enemy or infamous person standing outside a house in Fabriano could be struck with impunity by the householder.⁴⁸ This provision mixed intrusion with enmity as exculpation. Enmity that led to vendetta was implicitly tolerated by many statutes, which penalised rather the escalation of revenge beyond the 'original' couple of the offender and his victim. Explicitly, children, prostitutes and adulterous wives could be disciplined without penalty. At Arezzo, boys under twelve could be seized by the hair and beaten in chastisement, and anyone could beat prostitutes found outside the brothel.⁴⁹ Violence against prostitutes who contravened the restrictions on their movements was widely tolerated, and even included stripping them of their clothes.⁵⁰ When a Bolognese nobleman assaulted a pimp and killed him as he defended himself, the jurist Lodovico Bolognini argued that the killer should be acquitted even though the law allowed pimps to be only

⁴³ Pertile, *Storia del diritto italiano*, vol. 5, pp. 112–21.

⁴⁴ *Capitula, statuta et ordinamenta [civitatis Asti]*, fols. 23v–4.

⁴⁵ *Statuta patavina*, fol. 103 (1329). Likewise, *Statuti di Perugia*, vol. 2, p. 60; *Statuti del comune di Ravenna*, ed. Tarlazzi, p. 170; *Statuto del Podestà dell'anno 1325*, p. 177; etc.

⁴⁶ *Statuti di Perugia*, vol. 2, p. 124; *Codex statutorum . . . Alexandrinae*, p. 63; *Statuti di Ascoli Piceno*, p. 135; *Statuta antiquissima Saone*, ed. Balletto, pp. 41–2.

⁴⁷ *Statuta patavina*, fol. 129 (1372). ⁴⁸ *Lo statuto comunale di Fabriano*, p. 168.

⁴⁹ *Statuto di Arezzo* (1327), pp. 207, 227.

⁵⁰ *Statuta antiquissima Saone*, p. 37; M. Roberti, *Le magistrature giudiziarie veneziane e i loro capitolari fino al 1300* (3 vols., Venice, 1907–11), vol. 3, pp. 60–1 (1266).

beaten, not killed.⁵¹ Adultery reduced the wife to the level of a prostitute, and thus validated marital violence against her. A Lucchese husband could beat and incarcerate his adulterous wife as much as he wanted, provided he did not kill her.⁵² In Messina, the law allowed husbands to kill both the wife and the adulterer.⁵³ This was not a Sicilian peculiarity. The statutes of Savona declared that, if a wife left her husband to live with another man, and her husband, father or brother took revenge on that woman, even killing her, there would be no punishment.⁵⁴ This broad swathe of violence was not penalised because it was itself seen as punitive, and punitive of those who had crossed boundaries policed by families, neighbourhoods and their patriarchies, not by the agencies of the state.

This impunity is evident in all the types of source used for this study. Take wife-battering as an example. In Lucca the inclusion of husbands and wives in a statute originally concerned with the killing of parents shows how the law could be turned to support dominant gender relations. The Lucchese statutes of 1308 had a clause setting penalties for parricide: sons who killed their parents were to be dragged through the city and decapitated; sons who mistreated, wounded or assaulted them were to be 'corrected or castigated', banished or imprisoned by the Podestà as the parents wished ('ad voluntatem').⁵⁵ The same was to apply for homicide or assault between blood brothers. When the statutes were revised in 1342, this clause was extended to other relationships: uncles and nephews, for example, and, significantly, husbands and wives.⁵⁶ The 1308 clause clearly envisaged that some punishment would be inflicted on sons who assaulted parents, but its type, duration and intensity were left to the decision of parents. However, once applied to the relations between husbands and wives, it was used in exactly the opposite sense, to preclude the punishment of husbands who beat their wives. One example shows how this law worked. In 1385 a vintner, Dino, was denounced and prosecuted for punching his wife in the face, drawing blood.⁵⁷ Within a few days, his wife, Francesca, appeared in person before the judge and asked for Dino to be acquitted, as he had punched her 'for the sake of correction'. Francesca explicitly requested application of the 'statute on the penalty for killing a father or a mother' ('statutum de pena interficientis patrem et matrem'). Dino was duly acquitted. This was the typical sequence: the local official denounced the assault; the husband was indicted; the wife appeared and invoked the

⁵¹ *Consilia domini Benedicti Caprae et Ludovici de Bolognini* (1556), consilium 63.

⁵² *Statuta lucensis civitatis*, IV.83. ⁵³ La Mantia, *Antiche consuetudini delle città di Sicilia*, p. 21.

⁵⁴ *Statuta antiquissima Saone*, p. 32. ⁵⁵ *Statutum lucani comunis an. 1308*, p. 165–6.

⁵⁶ ASLu, Statuti, 5, fol. 31. ⁵⁷ ASLu, Podestà di Lucca, 5042, 2 Sept.

statute by name; the judge acquitted.⁵⁸ The gender aspect of this practice is striking: a battered wife, presumably still bearing her bruises, comes into the male-dominated court-room to confess that she deserved her injuries and to request that the man who hit her should not be punished. The statute gave the victim control over the penalty, and, in such cases, the victim requested that the penalty be waived.

This shows just one way in which husbands manipulated criminal justice in taking punitive action against their wives. The legal consultant Petrus de Ancharano refers to others.⁵⁹ One man sent his wife away to another city, and while she was there had her accused of theft and banished; when she returned, he killed her, claiming the impunity of killing a bandit. Another so afflicted his wife with beatings and intimidation that she fled; he accused her of theft and adultery; she was condemned as contumacious, and her dowry was awarded to her husband.

The prosecution of the 'witch' Matteuccia of Todi in 1428 (see above, p. 163), included charges that she had provided magical remedies for battered wives. Peasant women came to her and complained of their husbands who beat them or who kept mistresses; and Matteuccia provided spells and charms.⁶⁰ In Lucca, 'Maddalena the Greek' was indicted for using sorcery for herself and other female victims of male aggression.⁶¹ While in Florence as the concubine of Lorenzo de' Ricci, she was 'bitterly' beaten by him, and when she complained about Lorenzo to another woman, the latter advised her to put a spell on him. This she proceeded to do, obtaining magical powders from a priest at Castiglione to put in Lorenzo's food. The magic failed: he could tell immediately from the taste of the food that she had put something in it, and had her arrested, tried and condemned, as a result of which her right ear was amputated.

Chronicles record instances of woman-slaughter occasioned by adultery at all points of the social scale, from citizens and peasants to ruling families (the case of Parisina Malatesta, wife of the lord of Ferrara), Sicilian barons (Donna Aldonza di Santapau), and urban aristocrats (Bartolomea degli Uberti in Bologna, found 'indecently' with another man, or the wife of Pietro Zeno, strangled after she had given birth).⁶² Not that chroniclers always validate these killings. The Forlì chronicler Giovanni di maestro

⁵⁸ For other cases: *ibid.*, 5042, 18 Nov. 1385; 5043, fol. 55; 5045, 5 May 1386.

⁵⁹ Petrus de Ancharano, *Consilia* (Rome, 1474), *consilium* 409.

⁶⁰ Mammoli, *Processo alla strega Matteuccia di Francesco*, pp. 22, 24, 26.

⁶¹ ASLu, Capitano del Popolo, II, 12 Nov. 1387.

⁶² *Corpus chronicorum bononiensium*, IV, p. 528; Guillelmi de Cortusiis, *Chronica de novitatibus Padue et Lombardie*, ed. B. Pagnin, *Rerum italicarum scriptores*, vol. 12, pt 5 (Bologna, 1941-75), pp. 101, 103; 'Cronaca della città di Perugia dal 1309 al 1491 nota col nome di diario del Graziani', ed. Fabretti,

Pedrinò tells of a 'mad furrier' who killed his wife on the road to Castrocaro in a fit of jealous suspicion, after his brother had called him 'cuckold': 'it was thought that no one ever did greater wrong than he did, for she was a respectable woman'.⁶³ The theme of private punishment of erring wives is equally present in contemporary fiction. In Sabadino degli Arienti's collection *Le Porretane*, a girl clandestinely marries her lover, but when her father finds out he strangles the man with a towel and drags the girl by her hair.⁶⁴ Masuccio, with his taste for the grotesque, makes the slaughtered lover a dwarf.⁶⁵ In a tale by Sercambi, a priest having an affair with a married woman is punished by the husband's brother, who cuts off the priest's penis and slits his nose.⁶⁶ However, Boccaccio's tale (IV.9), in which the husband cuts out the lover's heart and feeds it to his adulterous wife, is set amongst the Provençal nobility and owes more to the literary traditions of troubadour poetry and, more distantly, of classical myth (Procne, etc).⁶⁷

One further form of private violence was tolerated by the state: duelling. In the thirteenth century, judicial combat was still allowed by some statutes as a means of resolving some accusations. In Parma, the statutes of 1254 allowed the possibility of combat, but only for peasants and foreigners, not citizens.⁶⁸ In the Perugian statutes of 1285, combat is permitted at the discretion of the Podestà or Capitano.⁶⁹ After the late thirteenth century, references disappear, though combat survived in the customs of some Sicilian cities: in Messina, duelling was allowed for *lèse majesté*, homicide, theft and rapine, while in Palermo it was categorically stated that citizens did not duel (leaving open the possibility of duelling by non-citizens).⁷⁰ As far back as the middle of the thirteenth century, governments are to be found attempting to prevent duels from taking place. The Perugian government directed the Capitano to make peace between disputants and prohibit planned duels.⁷¹ However, although duelling survived only vestigially in the thirteenth century, and was in visible decline in the fourteenth, it did not

p. 629; 'Diario d'anonimo fiorentino dall'anno 1358 al 1389', ed. Gherardi, p. 445; A. Flandina, 'Donna Aldonza di Santapau: notizie cavate da documenti inediti', *Archivio storico siciliano*, new ser., 3 (1878).

⁶³ Giovanni di Maestro Pedrinò dipintore, *Cronica del suo tempo*, ed. Borghezio and Vattasso, vol. 2, pp. 10–11.

⁶⁴ Sabadino degli Arienti, *Le Porretane*, no. 9. ⁶⁵ Masuccio Salernitano, *Novellino*, no. 28.

⁶⁶ Sercambi, *Novelle*, no. III.

⁶⁷ A. C. Lee, *The Decameron: Its Sources and Analogues* (London, 1909), pp. 143–51.

⁶⁸ *Statuta communis Parmae* [1254] (Parma, 1855), p. 267.

⁶⁹ Cutini, 'Giudici e giustizia a Perugia nel secolo XIII', p. 83.

⁷⁰ La Mantia, *Antiche consuetudini delle città di Sicilia*, pp. 20, 171; La Mantia, 'Notizie e documenti su le consuetudini delle città di Sicilia', *Archivio storico italiano*, 4th ser., 7 (1881), p. 323.

⁷¹ *Regestum reformationum comunis Perusii ab anno MCCLVI ad annum MCCC*, ed. V. Ansidei (Perugia, 1935), pp. 49, 67.

disappear but was transformed, through an association with single combat in tournaments, into the duel of honour.⁷² The Renaissance, says Cavina, was the golden age of the duel: a new type of duel, in which gentlemen and soldiers could resolve their quarrels beyond state intervention.⁷³ Billacois, too, saw the later Middle Ages as the golden age of a specific type of duelling: formal, public fights, presided over by a prince, which followed a ritual of challenges, requests for 'field', choice of weapons, ceremony of entry, regulation of the spectators, and oaths.⁷⁴ We find references to such fights in Italy from the later fourteenth century. In 1370 Pope Urban V wrote to his governor in Rome to express his displeasure that the governor had appointed time and place for a duel between two noblemen, and forbade it.⁷⁵ In the later fourteenth and fifteenth centuries, chronicles record lords and princes of Italy granting permits ('field' in duelling jargon) for single combat. The chronicle of the Gatari brothers – set mostly in Padua – relates two such duels: the first in 1373, between a captured soldier and a Friulan, and the second in 1395, between Galeazzo Gonzaga and the French knight 'Boucicault'. On the latter occasion, the chronicler describes at length the ceremonial and the brief, non-fatal fight, which was apparently provoked by Boucicault's allegation that Italians were cowards.⁷⁶ In Ferrara in 1404, two Modenese soldiers settled a martial dispute by a fight on the piazza: one was wounded in the thigh, the other was laid unconscious on the ground; both received medical treatment and survived.⁷⁷ Two more such fights are recorded by the Forlì diarist Giovanni di maestro Pedrino: in 1432, a man-at-arms of Astorre Manfredi, for certain quarrels, elected a field to fight; but his opponent failed to turn up, as he wanted to fight elsewhere. The chronicler expresses no regret for this 'no show' (which he suspected was a deception), as in his view this little spark of discord could have caused much harm. In 1442, two soldiers (*fanti*), one a servant of the lord of Forlì, the other a servant of the governor of Ravenna, appeared before Antonio Ordellaffi and obtained field on the Forlì piazza; they fought, and the man from Ravenna lost and was imprisoned.⁷⁸ References become more common in the second half of the century. In 1480, two foreign soldiers fought at Fossadalbero (outside Ferrara) before Ercole, duke of Ferrara. They wore

⁷² M. Cavina, *Il sangue dell'onore: storia del duello* (Rome and Bari, 2005), pp. 15–21, 33.

⁷³ *Ibid.*, pp. 41–2.

⁷⁴ F. Billacois, *Le duel dans la société française des XVI^e–XVII^e siècles* (Paris, 1986), pp. 23–8, 32–3.

⁷⁵ *Codex diplomaticus dominii temporalis S. Sedis*, ed. A. Theiner (3 vols, Rome, 1861–2), vol. 2, p. 474.

⁷⁶ Galeazzo and Bartolomeo Gatari, *Cronaca carrarese*, ed. Medin and Tolomei, pp. 83, 448–9.

⁷⁷ *Annales estenses Jacobi de Delayto*, in *Rerum italicarum scriptores*, ed. L. A. Muratori, vol. 18 (Milan, 1731), coll. 991–2.

⁷⁸ Giovanni di Maestro Pedrino dipintore, *Cronica*, vol. 1, pp. 370–1; vol. 2, p. 185.

helmets and cuirasses, and had cloaks over their arms. The elder man gave four great wounds to his younger opponent, and Ercole had to have them separated, so as to prevent a death.⁷⁹ A fight on a piazza was also recorded in 1499, between two of Ercole's men-at-arms. The chronicler describes the pavilions, stockades, and fight-supervisors (three of them members of the duke's own family). One of the fighters was accidentally killed, which greatly displeased Ercole, says the chronicler.⁸⁰ According to a hostile diarist, Pope Sixtus IV took perverse pleasure in the cruelty of duels, and twice granted permits to members of his palace guard.⁸¹ In Perugia, Malatesta Baglioni and Miccia degli Oddi – 'essendo poco amici' – challenged each other in 1486, and the duke of Calabria and other noblemen constructed a pitch, with stockade and pavilions. Come the day of the fight, the spectators were ordered to keep silent for the duration, and the two men, armed with lance and sword, fought until the duke threw a baton into the stockade; the duke then had them make peace and exchange a kiss.⁸² In Naples, in 1498, the king gave field to two men, one Italian, one Castilian, in the Citadella of the Castelnovo.⁸³

What sort of duels were these? Their participants were soldierly and chivalric, and perhaps too were their causes; certainly there is little or nothing in the descriptions to link them to supposed feuds or revenge. Some of the parties were simply noted as being in dispute ('discordantes', Rome, 1370; 'essendo poco amici', Perugia, 1486), though others are said to be motivated by hatred ('nasudo grave odio', Padua, 1395; 'ira vel odio moti', Rome, 1484). Some had specific quarrels regarding prisoners of war (Padua, 1373, Ferrara, 1404). In a tale told by Sacchetti, a Florentine knight is challenged to a duel by a German knight over the ownership of a heraldic emblem.⁸⁴ When repeated by Poggio Bracciolini the tale places the same quarrel between a Genoese shipowner and a French knight.⁸⁵ Sabadino degli Arienti has two Roman knights in Naples fight a duel over a lady; Masuccio has a similar cause lead to the deaths in single combat of two of Francesco Sforza's soldiers.⁸⁶ Treatises on combat draw on the analogy between duel and trial or warfare, and are careful to avoid association with revenge.⁸⁷

⁷⁹ Bernardino Zambotti, *Diario ferrarese*, p. 81. ⁸⁰ Ibid., p. 290.

⁸¹ *Diario della città di Roma di Stefano Infessura scribasenato*, ed. Tommasini, pp. 159–60.

⁸² 'Cronaca della città di Perugia dal 1309 al 1491 nota col nome di diario del Graziani', p. 655.

⁸³ *Cronica di Napoli di notar Giacomo*, ed. Garzilli, p. 223.

⁸⁴ Sacchetti, *Il Trecentonovelle*, no. 150; C. Mitchell, 'Sacchetti and Bartolus', *Bibliothèque d'Humanisme et de Renaissance*, 14 (1952).

⁸⁵ Poggio Bracciolini, *Facezie*, ed. M. Ciccuto (Milan, 1983), no. 202.

⁸⁶ Sabadino degli Arienti, *Le Porretane*, no. 54; Masuccio Salernitano, *Novellino*, no. 37.

⁸⁷ Cavina, *Il sangue dell'onore*, p. 46–7.

Deaths seem to be rare, occurring only by accident. More commonly, the duel either fails to take place or is brought to a swift end after the exchange of one or two bloody blows. In a duel in Ferrara in 1502 between Guido Vaino da Imola and Aldrovandino Piatese da Bologna, the duke halted the fight after Guido had seriously wounded his adversary's horse and had left him with no other weapon than a dagger.⁸⁸

Learned legal opinion in the fourteenth century was fairly hostile to such duels. Bartolus gave a *consilium* on a case before the emperor Charles IV: an Italian count had accused a German nobleman of lying and of besmirching the honour of Italians; the German challenged him to a duel; Bartolus advised that the German had no legal complaint, and that the emperor could not grant permission for the duel.⁸⁹ Baldus on two occasions declared that there were no circumstances in which duelling was permissible, but on a third apparently accepted the criteria of permissibility outlined by the emperor.⁹⁰ In the fifteenth century there seems to have been a softening of hostility to duelling. Angelus' advice on a case focuses not on whether duelling is lawful, but whether a certain party was obliged to partake in a duel, as 'combat is lawful where proof is lacking, according to Lombard law and the law of arms'.⁹¹ His negative answer is based not on the illegality of duelling, but on what we might call 'technical' reasons, disagreements between challenger and defendant about the time and place of combat. Calcanes opens a *consilium* by admitting that most learned lawyers in the past have denied the legality of the duel, but insists on re-examining the arguments for and against, on the grounds that 'different events and locations give rise to differences in law'.⁹² His conclusion is that duelling is lawful. He arrives at this conclusion by two routes. First, duelling is said to be lawful according to French custom and to Lombard law, especially in cases that cannot otherwise be proved. Secondly, the main objection – that duelling violates unequivocal divine, Roman and canon laws ('Thou shalt not kill', etc.) – can be overcome by the argument that killing is permitted by those very laws in some circumstances (traitors, enemies, wives caught in adultery, etc.). The case, significantly, involved an accusation by a nobleman that a knight had planned to betray a castle belonging to the duke of Savoy – he called him a 'traitor', and offered to prove this, 'according to the law of arms', in a duel. In conclusion, the evidence of neither *consilia* nor chronicles supports the suggestion that duelling was a type of feud or

⁸⁸ Ibid., p. 97.

⁸⁹ A. T. Sheedy, *Bartolus on Social Conditions in the Fourteenth Century* (New York, 1942), pp. 108–10.

⁹⁰ Baldus, *Consilia*, vol. 2, *consilium* 343; Cavina, *Il sangue dell'onore*, pp. 52–3 (without footnote).

⁹¹ Angelus, *Consilia*, *consilium* 374. ⁹² Calcanes, *Consilia*, *consilium* 2.

evolved out of vendetta. Duels took place between noblemen or soldiers, over specific types of insult, and were not part of an extended exchange of injuries. Participants were not seeking revenge, but proof.

This chapter ends, as it began, with the rituality of violence. The ritual of the *rissa* mirrors the rules of the duel: they share the role of spectators, the sequencing in the progression of violence, the assertion of a right to respond with violence to an affront, and the forestalling of injury by interveners. Rituality also underlies domestic, disciplinary and vindictive violence, as 'every society is structured by daily rituals'.⁹³

This chapter has established four main conclusions relating to the core aims of the book. First, in the relation between legal history and social history comes the problem of applying the tariff of penalties for violence, and the re-shaping of evidence and status that occurred in arguments placed before the court. Secondly, the ubiquity of three main forms of impunity, and the gendered way in which they worked. Thirdly, comparative analysis suggests that, contrary to conventional wisdom, the use of weapons was not a first resort. Lastly, across the period from the later fourteenth century there is the development of a new form of soldierly, knightly violence in the duel.

⁹³ Wickham, *Legge, pratiche e conflitti*, p. 447.

Theft

The shrewdness and trickery of thieves was a universal theme. In Boiardo's romance epic *Orlando innamorato*, the poet portrays a thief, called Brunello, as one who can climb smooth surfaces like a spider, conceal himself in daylight and take a ring from a woman's finger without her feeling it.¹ Needless to say, such fantastic exaggeration of thieves' skills is no reflection of reality. A more 'realistic' portrayal of robbers' ruses occurs in the tales of Sercambi: they set traps on the road for unsuspecting victims, and they cheat their accomplices.² In Sacchetti, a miller who knows how to distract his customers' attention while he stole some of their grain prompts the narrator's comment that 'Thieves' cunning is like that: they use all the tricks in the book to take what belongs to other people.'³

Italian city statutes on theft may be divided into two classes: those that set an elaborate tariff, and those that did not. Tariffs were constructed with two variable elements: the value of the theft and the number of offences. The value of the theft could be divided into a number of monetary levels, varying between two and seven. Only at the highest level (over 50 or 100 *lire*) was death by hanging imposed for a first offence. Below that point there were escalating sequences of fines or corporal punishments starting with the stocks or a whipping and proceeding through the removal of one or both ears or amputation of a hand. For second and subsequent offences, the 'entry point' on the tariff was set higher.⁴ The other class of statutes allows greater scope for the judge's discretion (*arbitrium*). This is usually

¹ *Orlando innamorato*, II.5.27–42; a portrayal that would seem to owe much to French fabliaux. Dean, *Crime in Medieval Europe*, p. 154.

² Sercambi, *Novelle*, nos. 85, 87, 88. ³ Sacchetti, *Il Trecentonovelle*, no. 199.

⁴ Thus *Codex statutorum* . . . *Alexandrinae*, pp. 63–4; *Statuto di Arezzo* (1327), pp. 212–13; *Capitula, statuta et ordinamenta [civitatis Asti]* (1534), fols. 35–v; *Statuta floride et alme civitatis Cesene*, clause 35; *Statuta et decreta communis Genuae*, fols. 13v–14; *Statuti del comune di Ivrea*, p. 21; *Statuta varia civitatis Placentiae*, pp. 380–1; *Statuti del comune di Ravenna*, pp. 162–3; *Statuti della città di Roma*, pp. 95–6; E. Zorzi, 'Il furto nella dottrina e nella legislazione veneta', *Atti dell'Istituto veneto di scienze, lettere ed arti*, 95 (1935–6), pp. 177–81; Ruggiero, *Violence in Early Renaissance Venice*, pp. 41–2; S. Piasentini, *Alla luce della luna: i furti a Venezia 1270–1403* (Venice, 1992), p. 37.

circumscribed both at the lower end (no corporal or capital penalty for thefts under a certain value or for a first offence) and at the upper ('famous' – that is, infamous – thieves are always to be hanged).⁵ Bologna's statutes fall into this latter category, the 1454 version declaring that

the judge has to take many things into account in imposing penalties [for this crime], such as the condition and age of the person, the quality and quantity of things stolen, also the habitual nature (*assiduitas*) of thieving, and considerations of time and place, which make it difficult, indeed impossible, separately and distinctly to set down the penalties, therefore we assign the penalties to be imposed on thieves to the discretion of the Podestà.

Five qualifications are, however, made: for a first theft of under 25 *lire*, the penalty should not be corporal or capital; 'domestic thefts' are not to be punished, except with the consent of the victim; the Podestà cannot punish for thefts committed outside Bolognese territory, except of horses or books; the penalty for street-robbery is hanging; and the penalty for a wife 'plundering' from the estate of her deceased husband is fixed as a fine.⁶ We shall be meeting some of these qualifications later in this chapter.

This chapter will focus on theft in Bologna in the fourteenth and fifteenth centuries. Some justification is in order for this narrowing of focus to one city. To study theft prosecutions in one city is not to study only thefts in that city or thieves from that city. Not only did a large number of the thieves come from other parts of Italy, and indeed Europe, but they were also prosecuted for thefts committed in other places. I shall return later to this extra-territorial dimension of theft prosecution. So, paradoxically, an apparent narrowing of focus allows us to see a universe of crime. Bologna is one of only a handful of Italian cities where a fairly full and continuous judicial archive survives. For most years from the late thirteenth century onwards, there is at least one register for each semester (period of six months), which represents the term of office of the chief judge (Podestà) and his judicial subordinates. For the purposes of this chapter, I have examined the registers for three twenty-year periods: 1350–69, 1400–19 and 1450–69.

First, it is useful to establish the numbers of cases, the period considered, and the overall character of thieves and thieving. The three twenty-year periods yielded the following data:

⁵ Thus *Statuti di Ascoli Piceno dell'anno MCCCLXXVII*, p. 93; *Lo statuto di Bergamo del 1331*, pp. 170–1; *Statuto del Podestà dell'anno 1325*, p. 185; *Statutum lucani comunis an. 1308*, pp. 171–2; *Statuta lucensis civitatis*, clause 78; *Statuta civitatis Mutine anno 1327 reformata*, p. 376; *Statuta patavina*, p. 116; *Statuta civitatis Verone*, clauses 36 and 114.

⁶ ASBo, Comune, Statuti, XVI, fols 47–v. This clause was already present in the 1389 statutes.

- 1350–69: 370 prosecutions, involving 724 persons and 701 acts of theft or robbery
 1400–19: 249 prosecutions, involving 397 persons and 874 acts
 1450–69: 114 prosecutions, involving 261 persons and 354 acts.⁷

What is immediately striking is the long-term downward trend in numbers. The slight anomaly of fewer thieves in 1400–19 committing more thefts than those in 1350–69 is partly accounted for by the inclusion in this sample of prosecutions (54 criminals and 175 crimes) conducted by the Capitano del Popolo, who dealt with proportionately more cases of multiple theft. The Capitano records for the 1350s contain no criminal prosecutions, and the office had been wound up by 1450. The apparently high numbers of thefts in the 1350s and 1360s would seem to give support to those who see the Black Death of 1348 as ushering in a period of social disorder and unbridled materialism, especially as the number of prosecutions for theft in one sample pre-plague year – 1344 – is very low.⁸ On this reading, the gradual reduction in levels of thieving, particularly in the middle of the fifteenth century, would be due to social pacification and economic recovery.

Theft touched every part of the medieval urban and rural worlds. Though most thieving was from houses and shops, other buildings also suffered, such as inns, stables, and churches, as did places in the countryside, such as mills and fields. Urban infrastructure – gatehouses and guardhouses, wells and canals, market-places and brothels, piazzas and porticoes – were also the sites of larceny. Thefts from the person could either embrace confrontation (robbery) or avoid it (purse-cutting, stealing from guests asleep at inns). The practice of thievery ranged from the opportunist, needing no planning or skill, to the organised, requiring considerable levels of information, training and technique. Italians of this period were not alone in speaking sometimes of a ‘craft’ of larceny.⁹ As has been said, there was nothing that was not worth stealing.¹⁰ The goods stolen encompassed all sorts of household items (sheets, blankets, pillows, pillowcases, tablecloths, hand-cloths, head-cloths, feather cushions, pots and bowls); all sorts of clothing (from shirts,

⁷ There are lacunae in the series of registers for 1450–69, amounting to 40% of the total number of months in that period. Nevertheless, the reduction in prosecutions, suspects and acts of theft remains substantial, even if the figures are adjusted to compensate for gaps.

⁸ Ibid., Podestà, Inquisitiones, busta 160, reg. 1, fol. 20; busta 161, reg. 2, fol. 3; reg. 3, fol. 39v; reg. 6, fol. 74; reg. 7, fol. 89. On this theme, see Dean, *Crime in Medieval Europe*, chapter 3.

⁹ For the allegation that a suspect had a ‘propositum se in arte furandi exercere’: ASBo, Podestà, Inquisitiones, busta 361, reg. 2, fol. 176v. For other periods, see Dean, *Crime in Medieval Europe*, p. 64.

¹⁰ C. Caduff, ‘I “publici latrones” nella città e nel contado di Firenze a metà Trecento’, *Ricerche storiche*, 18 (1988), p. 504.

breeches and underwear to all kinds of outer garments and headwear); many kinds of tool (hoes, hammers, pincers, forks, saws, axes and ploughshares); all kinds of livestock (bovine, ovine, equine, etc.) and food (meat, grain, oil, wine, grapes, beans, cheese, fish, chestnuts); various kinds of equipment (casks and tubs, carts and cartwheels, fishing nets); weapons and armour; raw materials and fabrics (bell-bronze, timber, bales of thread, lengths of cloth); valuables (silver buttons, gold rings, pearls, chalices); house fittings (doors, external wooden staircases, window-frames); and, last but not least, books, of medicine, of religion and of law. And children.¹¹

Lawyers worked with a definition of theft, drawn from Roman law, that paid attention to four elements: taking property, without the owner's consent, moving it from place to place, and having the intention of profiting from it (*animus lucrandi*).¹² However, Roman law was not as clear about theft as these later lawyers thought,¹³ and the same lack of clarity is evident in judicial practice. Theft had fuzzy borders with other property crimes, such as fraud, deception, misappropriation and criminal damage (*damna data, danni dati*).¹⁴ The language of theft – calling the actor a thief, and describing the action as furtive – can be applied to these other crimes in the court record. Thus, in the 1350s–60s, we find ‘thefts’ of objects that had been loaned: in 1362, a citizen accused a countrywoman – the former mistress of a Florentine – of treating ‘thievishly’ (*furtivo modo*) some pots and household linen that he had lent her, stealing them through fraud.¹⁵ A Florentine man living in Bologna accused another man of pawning two belts, one of silk, one of leather, which he had lent to him.¹⁶ Akin to this was the appropriation of goods entrusted for specific purposes: pieces of cloth for fulling and stretching, or for transport,¹⁷ hired horses to be returned to their owners,¹⁸ garments sent to a tailor to have silver buttons attached.¹⁹ Doubt whether such actions constituted theft was sometimes resolved by legal consultants.²⁰ In 1369 a farrier (*mariscalcus*) accused a man nicknamed

¹¹ For the theft of a two-year-old child: ASBo, Podestà, Inquisitiones, busta 204, reg. 8, fol. 116. Other examples: *Corpus chronicorum bononiensium*, vol. 4, p. 512; *Cronache senesi*, p. 315; Santini, ‘Gli statuti di Fossano’, p. 52.

¹² Kantorowicz, *Albertus Gandinus*, vol. 2, p. 306.

¹³ B. Nicholas, *An Introduction to Roman Law* (Oxford, 1962), pp. 212–14.

¹⁴ Pertile, *Storia del diritto italiano*, vol. 5, pp. 638–9; Zorzi, ‘Il furto nella dottrina e nella legislazione veneta’, pp. 158–70.

¹⁵ ASBo, Podestà, Inquisitiones, busta 193, reg. 1, fol. 85.

¹⁶ Ibid., busta 199, reg. 4, fol. 70 (1364).

¹⁷ Ibid., busta 178, reg. 1, fol. 12 (1354); busta 182, reg. 2, fol. 4 (1355).

¹⁸ Ibid., busta 199, reg. 2, fol. 3 (1363).

¹⁹ Ibid., busta 207, reg. 2, fol. 91 (1369).

²⁰ Laurentius Calcanesi, *Consilia, consilium* 112: the case of a servant who took some of his master's goods to a depositary, then later returned, and fraudulently removed and pawned them.

'Redbeard' of hiring a horse for three days to go to Faenza, but of taking it instead to Rimini – 'much further' – and of losing it in a betting game in 'Whore Street'.²¹ Redbeard's brother, a court official in the 1350s, was accused of appropriating the fines paid in by offenders.²² In each of these cases, the goods are said to have been 'stolen', and the thief to have had the intention to steal and to have converted the goods to his own use. What we would today call 'taking money under false pretences' – a type of fraud – was also treated as theft by the Bolognese court. One notary accused another of pretending to have an instruction from a student in Padua to send him some money via this thief.²³ And this shades into impersonation: a thief pretended to be the agent for an official and collected his dues.²⁴ There was also a wide border between theft, on the one hand, and criminal damage and disturbing possession, on the other. Field theft, such as taking small amounts of straw or grain or grapes, was supposed to be dealt with by the rural courts as criminal damage (*damna data*), but such cases also found their way into the Podestà's court. Property disputes often became acute at harvest time when one party accused the other of entering a farm or field and harvesting the crops, or taking crops already harvested. The vocabulary of theft is sometimes applied to these acts of possession-disturbance.²⁵

As I have said, thefts ranged from the opportunistic to the highly planned. Two examples of opportunists would be, first, Matteo da Slavonia, a vagabond, who stole underwear left drying in the sun, laundry being washed in a canal, and a hood from the head of a man sleeping outside the church of San Petronio;²⁶ and, secondly, Domenico di Landino, who took a horse tied to a column outside a tavern, two spurs left by a traveller on a well outside a tavern, two ox-blankets from a wood-cart from San Marino, and so on.²⁷ Equally opportunist were those robbers who went out to lie in wait by the roadside to rob whomever passed.²⁸ Among thefts requiring no skill are those of 'Mad John' the Englishman, who was charged with three shop-thefts in 1419: ill-prepared, he tried to open a door and break through an adjoining wall using only a knife, but had to find a wooden pole to finish the job instead.²⁹ Thieves seeking to make less noise and do less damage obtained preliminary information before venturing into houses: knowledge about sums of money held, or about the sleeping and rising

²¹ ASBo, Podestà, Inquisitiones, busta 207, reg. 2, fol. 305.

²² Ibid., busta 176, reg. 11, fol. 102 (1353). ²³ Ibid., busta 174, reg. 2, fol. 3 (1352).

²⁴ Ibid., busta 185, reg. 5, fol. 112 (1357).

²⁵ Ibid., busta 174, reg. 12, fol. 17; busta 188, reg. 1, fol. 131.

²⁶ Ibid., busta 298, reg. 3, fols. 6–9 (1412). ²⁷ Ibid., busta 285, reg. 5, fols. 29–34 (1404).

²⁸ Capitano del Popolo, Giudici del Capitano, busta 847, fol. 11 (1400).

²⁹ Podestà, Inquisitiones, busta 311, reg. 2, fols. 111–v.

habits of the householder;³⁰ information from servants on the whereabouts of money or the movements of occupants.³¹ Others developed techniques for 'hooking' garments out of shops,³² or cutting sleeves from people in order to release the coins often held within them.³³ Some jobs were well planned. For example a German from Swabia had worked out a method for stealing cloth, which he moved over the city walls at night, and then out of the Bolognese *contado* for sale at Mirandola.³⁴ Or a man from Tortona, possibly also German, had a clever means of stealing cloths from the stretching frames at night, which he then 'posted' through a grill in the city wall; he hid them first thing in the morning, and, on the following night, retrieved them and took them to Modena or Ferrara.³⁵

Once caught, suspected thieves seem to have confessed very readily, but some were not lacking in arguments to defend themselves. Most of the four elements in the Roman-law definition of theft could give the suspect room to manoeuvre and to re-define the event in a non-criminal way. It could for example be denied that the property belonged to someone else, that it was taken from place to place, or that there was any intent to steal. One legal consultant objected to a number of theft charges on such grounds.³⁶ When a man was charged in January 1400 with removing from the house of a dead innkeeper goods to the value of 300 ducats (beds, bedding, clothing, tin plates, silver cups), his defence was that he had not done this with the intention of stealing, but with the intention of enforcing the rights of his son who was a legatee under the innkeeper's will.³⁷ The argument that goods were taken in order to protect rights and claims, especially as caution or security for debt, was used by peasants and city folk alike.³⁸ A similar ploy was to deny any element of cupidity in the action. Thus, in 1451 a taverner from Castenase was charged with stealing a quantity of honey from a farm; he defended himself by saying that he did this not with the intention of profiting ('non animo lucrandi'), but only to eat the honey as he walked along; he also asserted that the spot was woodland and not near farm buildings.³⁹ To take a small amount of honey to eat was one thing, to take a larger amount to sell was another.

³⁰ Ibid., busta 288, reg. 6, fol. 67 (1406).

³¹ Ibid., busta 289, reg. 1, fol. 14 (1406); busta 171, reg. 6, fol. 7 (1350).

³² Ibid., busta 284, reg. 3, fols. 112–13v (1404). ³³ Ibid., busta 287, reg. 3, fol. 110 (1406).

³⁴ Ibid., busta 295, reg. 2, fols. 33–v (1410).

³⁵ Capitano del Popolo, Giudici del Capitano, busta 847, fols. 53–4 (1401).

³⁶ Ludovicus [de Pontanis] de Roma, *Consilia*, consilia 144, 190.

³⁷ ASBo, Podestà, Inquisitiones, busta 277, reg. 1, fols. 13–17v.

³⁸ Ibid., busta 307, reg. 2, fol. 138v; busta 311, reg. 1, fols. 64–v. ³⁹ Ibid., busta 356, reg. 2, fols. 146–7.

When charged with a list of eleven thefts in August 1417, Simone Forti hired an attorney (*procurator*) to prepare his defence. The thefts were alleged to have taken place between January and July. In January he was said to have filched a jacket and hood belonging to a worker who had taken them off while pruning some trees; in February he took a tunic and a metal bowl from a house, in March a mattress from another house; in May he made six separate thefts of sheets and household linen from his own mother's house, and pawned the goods to Jews; finally, in July, a man gave him a breastplate to take to someone else, but he pawned it instead.⁴⁰ His attorney, explicitly acting 'lest Simone suffer the death penalty', tried to minimise the seriousness of the charges by arguing that they were either domestic thefts or not thefts at all, but loans. In this version, Simon had asked the tree-pruner if he could borrow and pawn his clothes, and the pruner had agreed; he had lived with his mother for thirty years; and the owner of the breastplate was a close friend who would, he said, happily lend Simone goods much more valuable than a piece of armour. The remaining two charges were simply denied, and the attorney insisted on Simone's good repute, untainted by any previous suggestion of larceny.

Servants taking their due wages might have a legitimate defence against the charge of theft. A Paduan living in Bologna was charged in April 1400 with stealing 75 ducats the previous September from a chest in the house of the rector of a city church, don Giovanni. His defence was that he was the rector's servant for a month 'during the epidemic' (the plague of 1399), from which the rector died. Every day, the servant asserted, don Giovanni would ask him, for the love of God, not to leave him, and promised that he would be repaid after his death; and after that event, one of don Giovanni's clergy told the servant to take the money for his wages from the chest.⁴¹ In offering such a defence, servants had to face powerful prejudices working against them: mistrust of servants as potential thieves (among other faults) has been called 'congenital' among employers, and was spread and reinforced by fictional and moralistic writings,⁴² and by laws that gave credence to employers' assertions.⁴³ At the same time, the number of servants prosecuted for theft after the Black Death has been seen as evidence of greater rancour in their relations with employers.⁴⁴ Nevertheless, the defence of unpaid wages was used in a prosecution in Brescia in the later fifteenth century,

⁴⁰ Ibid., busta 307, reg. 4, fols. 86–89v and 103v–9. ⁴¹ Ibid., busta 277, reg. 1, fol. 106.

⁴² Guarducci and Ottanelli, *I servitori domestici della casa borghese toscana nel basso medioevo*, pp. 63–6; Klapisch-Zuber, 'Women servants in Florence during the fourteenth and fifteenth centuries', p. 61.

⁴³ *Statuta et decreta communis Genuae*, fol. 14v; *Statuti della città di Roma*, p. 186.

⁴⁴ Piasentini, *Alla luce della luna*, p. 94.

on which two learned lawyers were asked to give their opinions. The case was this: the servant-woman Benvenuta took a hundred ducats from the chest of her employer, in his absence and without his knowledge. When the loss was discovered, she absconded, and when arrested she denied taking the money. However, her subsequent defence was that she took the money as her wages: she had been with this employer for twelve years and had not been paid, despite her frequent requests, and this was causing problems in her own marriage – ‘her husband did not view her kindly (*libenter*), as she had not given him a dowry’. Her employer had also had sex with her, from which she had become pregnant. The legal consultant Alessandro Tartagni set out the arguments pro and contra: on the one hand, there was scriptural authority to support the position that one can take what one is owed on one’s own authority; on the other hand, there were legal texts to support the view that this is prohibited. All the elements of theft were present in her action: the money was taken without the owner’s knowledge, she intended to profit from it, and so on. In the end, however, Tartagni came to the opinion that this was not theft: she was a creditor and took the money not ‘*animo lucrandi*’, but ‘*sibi satisfiendi*’.⁴⁵ And the Veronese consultant Bartolomeo Cepolla agreed with this conclusion.⁴⁶

Alternatively, robbery could be re-defined as an act of war. Two men from the territory of Rimini were charged in October 1411 with a sequence of eighteen acts of robbery and theft, some in the previous June, others up to thirteen years previously: stealing armour, horses, sheep and other livestock; invasion of Bolognese territory ‘like robbers and pirates’, with the destruction of property and the rape of a woman. In this case the defence of acts of war was not accepted, and both men were hanged.⁴⁷

Finally, suspects could object that they had been abusively tortured. In 1416 Roberto Formaglini was charged with four counts of theft, committed between December 1412 and January 1415, from four houses in his neighbourhood. The goods allegedly taken comprised various household items (a blanket, tablecloths, scissors etc.) and clothing. He confessed to three of these thefts, but two days later his attorney attempted to revoke this confession arguing that Roberto had been detained by the judge for two weeks before the confession and ‘continuously’ tortured. This, the attorney argued, contravened the law in numerous ways: holding a suspect in the Podestà’s palace rather than in the communal jail; torturing before the inquisition was formally initiated; repetition of torture without

⁴⁵ Tartagni, *Consilia, consilium* 125. ⁴⁶ *Consilia criminalia Bartholomei Cepole, consilium* 26.

⁴⁷ ASBo, Podestà, Inquisitiones, busta 296, reg. 2, fols. 181–4.

new incriminating evidence. And the effect of the torture is graphically described: before his detention, Roberto had been strong and robust, it was alleged, but now he was pale, could hardly support himself or walk, was unable to talk, and the flesh on his hands and arms was 'corroded and mortified'.⁴⁸ This sounds like a case of ropes being tied too tightly.⁴⁹ A similar case occurred just two years earlier, when Francesco da Sancino, known as 'the barber', was charged with stealing a crossbow and bolts from the room of the Bolognese Capitano della Montagna in Roncastaldo. Again his attorney argued that, before he took the crossbow, Francesco had been illegitimately imprisoned and tortured by the Capitano for two weeks. Francesco took the crossbow, it was claimed, in order to defend himself as he made his escape (so there was no *animus furandi*), and as soon as he reached safety he sent it back. And again the attorney stressed the physical disfigurement produced by such torture: the facial pallor, the mortified flesh.⁵⁰

The fact of torture means that it is time to reconsider the trial documents in the light of the circumstances in which they were produced. In the case of theft, those circumstances included the infliction of pain through torture. Torture was not limited to suspected thieves. For example, in Rome in the early years of the fifteenth century, a chronicler records it being used on those suspected of the following crimes: treason, wounding, killing a Jewish physician, speech crimes against the regime, smashing a tomb-sculpture in a papal chapel and presenting a sack full of 'nasty things' to the French ambassadors.⁵¹ Nevertheless, it seems that the torturing of thieves almost went without saying. 'Infamous' – habitual and notorious – robbers risked being immediately submitted to torture aimed at obtaining an immediate confession and a quick execution (for example, within one day).⁵² 'Get hold of them and torture them', one legal adviser recommended for those accused of theft.⁵³ Indeed, a thief's confession made without torture seems to have been regarded as invalid.⁵⁴ Nor was it only the notorious who were tortured. In Bologna in 1481, a Genoese merchant staying at the 'Lion Inn' found that his bag containing valuable jewels had been stolen, so the

⁴⁸ Ibid., busta 305, reg. 2, fols 99–104.

⁴⁹ C. Puccini, 'La tortura: storia del dolore umano tra diritto e medicina', *Università degli studi, Macerata. Annali della facoltà di giurisprudenza*, 1993–4, pp. 362–3.

⁵⁰ ASBo, Podestà, Inquisitiones, busta 308, reg. 3, fols. 61–5.

⁵¹ *Il diario romano di Antonio di Pietro dello Schiavo*, pp. 19, 31, 35, 60, 64, 84.

⁵² E. Cortese, *Il diritto nella storia medievale* (Rome, 1995), vol. 2, p. 279; Piasentini, *Alla luce della luna*, pp. 34–5.

⁵³ 'mettere le mane adosso et procedere cum tortura et cum omne tormento come se fa contra de li ladri': C. Buscarini, 'Marino Calcagni, *legum doctor*: un sammarinese fra Montefeltro e Malatesti (1427–1464)', *Studi romagnoli*, 45 (1994), pp. 213–14.

⁵⁴ C. Trasselli, *Siciliani fra Quattrocento e Cinquecento* (Messina, 1981), pp. 44–5: a case at Enna, 1475.

innkeeper with all his family and servants – twelve people in all – were sent for and tortured one by one.⁵⁵ At the same time, judges had to make sure that they had enough evidence to hang a man. Angelus de Ubaldis touched on this in an opinion regarding the inquisition against a ‘public and infamous robber’, Francesco da Sulmona.⁵⁶ Francesco had confessed to being an ‘infamous robber’, but that, Angelus argued, was not enough to condemn him as such and to hang him. For being an infamous robber was not a matter of fact, but a legal definition (*dispositio*), so to confess this was to confess only to that label, not to a fact. Judges must beware of sending men to the gallows on simple confession alone, without listing as many crimes as are necessary to make the robber ‘infamous’. This was perhaps why judges exceeded their powers under the rules of torture, which stated that any torture without *preceding*, incriminating evidence was unlawful (see above, p. 107). This was already happening by 1300. Gandino asked whether, when someone has confessed to a theft under torture, he could be asked about other thefts, for which there were no *indicia*. His answer was: not by law, but by general custom in Italy it happened every day.⁵⁷

Can torture then explain a strange feature of indictments for theft, namely the detailed specification of goods, places and values? A typical Bolognese theft indictment would include precise details on the object (material, colour, weight, etc.), the victim, the location, the value of the object, and the proceeds of its sale or pawning.⁵⁸ That this information was remembered by the suspect under questioning is suggested by phrases of uncertain or failing memory: ‘about two years ago’, ‘stolen from a man he did not recognise’, and so on. However, when a thief confesses to many crimes, perhaps numbering twenty or thirty, and spread over several years, how can we believe that he is remembering all that detail? It is difficult to accept that torture or the fear of torture could produce accurate recall on this scale; more likely that it encouraged invention and falsification. But perhaps the trial record is misleading in attributing all the descriptions of stolen goods and their disposal to the suspect. Stern suggests that theft indictments were constructed from hearsay evidence.⁵⁹ This might explain why, in the Florentine case, the indictments are so full of gaps; it would not explain why, in the Bolognese case, they are so full of detail. Stern may be right, however, in displacing the origin of these indictments, away from the

⁵⁵ *Corpus chronicorum bononiensium*, IV, 461–2. ⁵⁶ Angelus de Ubaldis, *Consilia, consilium* 403.

⁵⁷ Kantorowicz, *Albertus Gandinus*, vol. 2, pp 163–4.

⁵⁸ This seems very different from the ‘bits and pieces of [incomplete] information’ noted for theft charges in Florence: Stern, *The Criminal Law of Medieval and Renaissance Florence*, p. 216.

⁵⁹ *Ibid.*

suspect. It may be that indictments were compiled from a variety of sources: a rough indication of dates and victims from the suspect; precise information from the victims themselves or (more likely) from pawnbrokers who must have maintained ledgers of goods deposited and moneys lent. In that case, the indictment, with its impressive descriptions, is the work of several hands and many hours, and not what it purports to be, a 'spontaneous' confession by the suspect: it is multi-vocal, even 'heteroglossic'.⁶⁰

As we have seen, the Podestà did not have the legal right to punish thieves for thefts committed outside Bolognese territory, except in the case of horses and books. This raised an issue of the territoriality of jurisdiction on which the statutes usually offered little guidance. Some, like Bologna, did consider the problem: those of Bergamo and Arezzo, for example, allowed prosecution of such extra-territorial thefts only when the goods were brought into their territory.⁶¹ Some legal consultants dealt with this problem. Baldus was asked whether some robbers staying in the territory of the marquis of Monferrato could be punished for robberies they committed outside that territory.⁶² Baldus appeared keen to provide some grounds for punishment, 'lest their crimes go unpunished', but he struggled with two major objections: that punishment should be in the territory of the crime; and that, though the robbers could be said to have planned their activities in the marquis's lands, 'in crimes what counts is where the crime was completed, not where it was begun'. His solution was that there were two grounds for punishment by the marquis's judge: if they brought stolen goods into his territory (this was Bartolus' argument) and if they planned their robberies there, then a discretionary penalty – such as a single round of torture on the rope, or a fine – could be imposed. Elsewhere, however, Baldus was hostile to Bartolus' notion that 'a new act of theft is born of a change of territory', and argued instead that 'no new act of theft is born of continued handling'. This was declared a 'truer' opinion by a later fifteenth-century jurist, in an opinion regarding some Veronese robbers captured at Trent.⁶³ There seems, then, to have been little settled agreement on this issue, though everyone agreed that vagabonds could be punished by a judge for crimes committed anywhere (both Baldus and Cepolla refer to this as uncontroversial).

Statutory restrictions and legal uncertainty did not stop judges prosecuting extra-territorial theft with some regularity. In the late thirteenth

⁶⁰ Arnold, 'The historian as inquisitor', p. 383.

⁶¹ *Lo statuto di Bergamo del 1331*, pp. 167–8; *Statuto di Arezzo (1327)*, pp. 212–13.

⁶² Baldus, *Consilia* (Lyon, 1559), vol. 1, *consilium* 154.

⁶³ *Consilia criminalia Bartholomei Cepole Veronensis, consilium* 58.

century, Gandino stated that the Podestà of one city had no jurisdiction over thefts committed in another, but noted that 'ferce Podestà often punish thieves and robbers for thefts and robberies committed elsewhere'.⁶⁴ In each of the twenty-year periods studied here, there was roughly one case every two years (13 in 1350–69, 10 in 1400–19, 9 in 1450–69). Nor were the stolen items limited to horses or books.

Most of these thieves came from Emilia-Romagna (Forlì, Imola, Rimini, Cesena, Modena, Parma), from eastern Lombardy (Verona, Mantua, Padua), from northern Tuscany (Florence, Arezzo), or from Germany and Hungary. Their geographical origin does, however, seem to widen with time: by the 1400s we find men from Piedmont (Novara, Tortona) and by the mid-century men from further south (Fossombrone, Benevento), further north (Trentino), further east (Capodistria) and further west (Como, Brittany). Their cases were of two kinds. The majority were those that involved thefts both within and outside Bolognese territory, for example a Florentine living in Padua was prosecuted for three thefts in Bologna and eleven in Padua.⁶⁵ The second type entailed bringing stolen property into Bolognese territory. This was often stated explicitly, as in the case of horses stolen in Florence or Pisa and sold in Bologna,⁶⁶ or some items stolen from the wardrobe of the empress while she was staying in Modena in 1368, and brought to Bologna by her Bohemian tailor.⁶⁷ Sometimes the introduction of stolen goods has to be inferred, as in the case of robbers who committed robberies outside Bolognese territory: a gang of three men (from Imola, Mantua and Germany) who robbed some Bolognese soldiers in the territory of Imola,⁶⁸ or another gang of three (a German, a Breton and a slave) who robbed and killed in the territory of Cesena.⁶⁹ We might ask, however, by what legal right did the judge in Bologna prosecute thieves for acts committed outside his jurisdiction? Did this not offend against the established principle that jurisdiction belonged to the judge where the crime was committed (the *forum delicti*)? At least one legal consultant was hostile to the idea of a judge in Asti punishing a thief for stealing in Alessandria.⁷⁰ The answer is different for each of the two kinds of extra-territorial theft. When stolen property was brought into Bolognese territory, that importation and any consequent sale could be considered as criminal acts in themselves:

⁶⁴ Kantorowicz, *Albertus Gandinus*, vol. 2, p. 308.

⁶⁵ ASBo, Podestà, Inquisitiones, busta 279, reg. 3, fol. 30.

⁶⁶ Ibid., busta 182, reg. 6, fol. 180 (1355); busta 196, reg. 1, fol. 32 (1363).

⁶⁷ Ibid., busta 206, reg. 1 fol. 20 (1368). The goods were a green silk hood with a wide *frigio* of gold, lined with violet sindon, and four pairs of shoes.

⁶⁸ Ibid., busta 278, reg. 3, fols. 64–5 (1400).

⁶⁹ Ibid., busta 359, reg. 2, fol. 73 (1453). ⁷⁰ Baldus, *Consilia*, vol. 5, *consilium* 348.

they brought the action within the standard legal definition of theft, as this included handling (*contractatio*) and 'conversion to own use'. Sometimes this is explicitly stated in the trial record.⁷¹ More difficult to explain is the other type of extra-territorial crime: the addition in the inquisition of thefts outside Bologna. Their inclusion must have been the result either of information, interrogation or (most likely) torture. This leaves a puzzle: why would a suspect, even under torture, confess to crimes committed outside the jurisdiction of the interrogating judge, especially if this was certain to make his punishment worse?

Skill was needed for the successful disposal of stolen property. The thief had four options: personal consumption (eating the food, wearing the clothes); sale to second-hand dealers or to traders and travellers; pawning to moneylenders, Christian or Jewish; and using stolen goods to pay for food and drink at inns. Personal consumption is least apparent in the sources, though they sometimes specify that a thief or his family has eaten the stolen cheese/meat/grapes, or made clothes from the stolen cloth. This appears infrequently in the trial record. Mostly, thieves admit to converting stolen goods into cash. Trial records give both a monetary value for each stolen item and the sum realised through sale or pawning. Though individual figures may be inaccurate, as a whole these figures consistently suggest that sale was more remunerative than pawning. If the indictments are to be believed, sale realised over half, sometimes the full, value, whereas moneylenders rarely gave more than one third of the worth of pawned goods. Bologna, like most Italian cities in this period, had numerous Jewish moneylenders (and a diminishing number of Christian ones), as well as a thriving second-hand clothes market. Disposing of stolen items was thus not difficult, but thieves had to be careful: Jews were under pressure from governments not to receive stolen property,⁷² and some, as we shall see, were on the alert for thieves. It could also run against their economic interest to accept stolen goods, as by one legal opinion Jews could be forced to restore such goods to their owners without compensation.⁷³ If the span of a thief's activity can be taken as a sign of his or her success, then the most successful thieves seem to have practised a particular kind of conversion of goods into cash. Take Bartolomeo da Brescello (Parma), indicted in 1412 with thirty-five counts of theft over the previous five years. He kept some grain to eat and one cloak (*giornea*) to wear, but mostly he took goods out of the territory

⁷¹ ASBo, Podestà, Inquisitiones, busta 202, reg. 1, fol. 235.

⁷² Dean, *Crime in Medieval Europe*, pp. 19–20.

⁷³ Johannes de Anania, *Consilia, consilium* 70: a case about a *revenduse* in Bologna who had pawned some goods to a Jew.

and avoided local traders: he sold some articles in Ferrara and others to a taverner in San Felice (Modena); he sold a goat to a butcher, a horse to a mountain-dweller, spun thread to a gardener, and got his wife to sell a linen jacket.⁷⁴ Matteo da Sclavonia, referred to earlier, was also indicted in 1412 with thirty-four counts of theft: he limited his use of Jewish moneylenders, preferring to shift goods out of Bolognese jurisdiction, either taking them himself to sell or gamble in Modena and its *contado*, or selling them to travellers: for example, he sold a tunic to a man going to Florence, and a cloak to a woman going to the market at Toscanella. Other items he sold to taverners or labourers, or used to pay for food and drink at inns.⁷⁵

Successful disposal could also be facilitated by concealment and transformation: when items were pawned, some thieves gave false names to the moneylenders; identifiable items of silverware might be broken up, and silver clothing-ornaments might be cut up or melted down.

Some thieves were caught in the act, for example, a man found in a village at night with a sack on his shoulder intending to steal grain from a house,⁷⁶ or a man called 'el Fiorenzuola' found at night with an axe outside a spicer's shop.⁷⁷ A German vagabond specialised in cutting the sleeves from the clothes of people as they stood buying fish, watching a dice-game or listening to church music, thus releasing coins or purses; but he was caught when some keys fell noisily to the ground.⁷⁸ Then there were those arrested with stolen goods on them: one man walking along the Strada Maggiore was recognised by citizens as a person of ill repute, and they told him to 'Put down those things you've stolen, thief.'⁷⁹ A Florentine cloth-washer working for a German in Bologna was gambling away some borrowed money, which he was supposed to take back to his master, when he was discovered by his employer's business partner.⁸⁰ A barber who made a habit of stealing hammers and chisels belonging to the masons working on the church of San Petronio had the misfortune to meet one of his victims in the pawnshop when he tried to offload his latest haul.⁸¹ As this example suggests, victims organised their own enquiries and searches among the pawnshops, second-hand clothes dealers and other likely traders. As a result, some thieves were caught by alert shopkeepers. Despite the efforts of a female thief to disguise some silver ornaments by cutting them up, they were recognised by the goldsmith to whom she offered to sell them, as he had been forewarned by the owner; she abandoned the goods and left

⁷⁴ ASBo, Podestà, Inquisitiones, busta 298, reg. 3, fols. 2–5. ⁷⁵ Ibid., fols. 6–8.

⁷⁶ Ibid., busta 285, reg. 5, fol. 59 (1404). ⁷⁷ Ibid., busta 295, reg. 3, fol. 3 (1410).

⁷⁸ Ibid., busta 287, reg. 3, fols 110–11v (1406). ⁷⁹ Ibid., busta 297, reg. 3, fol. 56 (1412).

⁸⁰ Ibid., busta 278, reg. 4, fol. 122 (1400). ⁸¹ Ibid., busta 279, reg. 3, fol. 121v (1401).

his shop 'covered (*convicta*) in embarrassment and shame'.⁸² A *contadino* called 'Brettone' from Sesto took a woollen garment, lined with black leather, to Ventura, one of the city's Jewish moneylenders; Ventura, seeing him standing there 'timid and uncertain', guessed from this that he was a thief. Ventura had already been asked by the owner of this item to notify him if anyone brought it to his pawnshop. Ventura said to Brettone: 'You thief, you've stolen this *cioppa*. I'll have you hanged.' At which Brettone fled, leaving the garment behind.⁸³ As this example suggests, Jews, though berated by governments as receivers of stolen property, could be the allies of victims in their search for thieves.⁸⁴

The case of 'Brettone' also takes us further into relations between thieves and their victims. Armed with information from Ventura, the victim in this case, Oliviero de' Grassi, searched for Brettone, and caught up with him near the house of Bartolomeo da Saliceto, during the mourning for the latter's death. Grassi seized 'Brettone', saying, 'I've recovered the *cioppa* you stole from me. Now give me back my hood. If you don't, I'll take you to the Podestà and have you hanged.' Brettone said, 'For the love of God, don't say anything, as I want to make restitution.' Grassi did not let him leave without giving a pledge to return the hood, which he later did.⁸⁵ The restitution of goods by thieves is quite commonly recorded in the trial records, and features too in a fictional tale of Sacchetti's.⁸⁶ This was mostly done to avoid the crime being reported to the authorities. Giovanni the barber returned his tools to the mason who recognised them in the pawnshop.⁸⁷ A peasant called Jacomo, but known as 'Grilla', released a cow and veal-calf when the theft became known to the local inhabitants.⁸⁸ A man of Bologna stole three shirts, with underwear, from the castle of Mirandola, but when he heard that the owner was searching for them, returned them in fear lest the theft be 'more publicised'.⁸⁹ A miller and his accomplice used their friendship with a gardener's female servant (or maybe lover) to find out where he kept his money; they then stole the impressive sum of 244 ducats from under his bed, and a further 76 *lire* from a pitcher. The gardener, however, suspected them because of their 'frequent talk' with his servant, and because she had fled; and so the thieves used an intermediary to ask the gardener to keep quiet, as they would return the money – which

⁸² Ibid., busta 288, reg. 6, fol. 76v (1406). ⁸³ Ibid., busta 297, reg. 3, fol. 55 (1412).

⁸⁴ An earlier example of a lender who refused to lend money on goods he suspected were stolen: *ibid.*, busta 204, reg. 8, fol. 58 (1367).

⁸⁵ Ibid., busta 297, reg. 3, fol. 55. ⁸⁶ Sacchetti, *Il Trecentonovelle*, no. 198.

⁸⁷ ASBo, Podestà, Inquisitiones, busta 279, reg. 3, fol. 121v.

⁸⁸ Ibid., busta 285, reg. 5, fol. 78v (1405).

⁸⁹ Ibid., busta 290, reg. 2, fol. 28 (1407). A similar case: busta 305, reg. 3, fol. 162v (1416).

they did.⁹⁰ Further evidence of informal deals between thief and victim: in November 1411 a thief stole several lengths of cloth from a shop, worth 70 *lire*; he sent some of these to Ferrara to sell, but in order that the theft should not come to the notice of any official in Bologna, he paid the shop-owner 50 *lire* as 'emendation'. This unconfident or unlucky thief made similar arrangements with two more of his victims.⁹¹ Use of middlemen to arrange restitution or emendation was not uncommon: one thief returned the unspent portion of a sum of money via the victim's cousin,⁹² another used a Dominican friar to return some expensive clothing to a clothes-dealer.⁹³ A similar case was recorded in Rome.⁹⁴ Other deals could involve moneylenders: Giovanni da Cesena in December 1362 stole seven pounds of silk from the house of two women who were working this material for a Lucchese silk-merchant and his Bolognese partner. Giovanni pawned the silk to a Jew for 4 *lire*, but in January he learned that the merchants were on his trail, so he spoke to the lender, arranging to exchange the silk, which was returned to the merchants, for other goods.⁹⁵ Intermediaries did not always wait to be asked to intervene. In 1355 a large sum of money was stolen from a peasant's house in Capugnano. The thief was followed by another man, who took the money from him and then offered to return it to the owner, minus 100 *lire*, which he intended to keep for himself, threatening the owner that unless he agreed to this, he would not get any of his money back.⁹⁶

The practice of concords between thief and victim also explains the residual attempts by victims to control the course or outcome of trials, as if they were plaintiffs with a role in proceedings.⁹⁷ In 1369, a servant from Savoy was prosecuted for stealing a pair of sleeves and a sheet from his employer, but his employer appeared in court to declare that he was 'content' that no corporal punishment be meted out to his servant.⁹⁸ In 1402 two butchers were the object of an inquisition for stealing thirty cartloads of hay from the house of a nobleman; but he subsequently sought to withdraw his 'accusation' and declared them not guilty.⁹⁹ When two men took goods

⁹⁰ Ibid., busta 289, reg. 1, fol. 14 (1406).

⁹¹ Capitano del Popolo, Giudici del Capitano, busta 856, fols. 91–2.

⁹² Podestà, Inquisitiones, busta 176, reg. 10, fol. 15 (1353).

⁹³ Ibid., busta 356, reg. 2, fol. 33v. The goods comprised some silver buttons, a silk 'tessutum', and a 'vestem ad usum mulieris de setanino cremusino cum manichis apertis suffultam dorsis vagirorum', worth 250 *lire*.

⁹⁴ *Il diario romano di Antonio di Pietro dello Schiavo*, p. 38.

⁹⁵ ASBo, Podestà, Inquisitiones, busta 195, reg. 7, fol. 59. ⁹⁶ Ibid., busta 180, reg. 3, fols 23–v.

⁹⁷ Cf. the private action against thieves in Piasentini, *Alla luce della luna*, pp. 57–8.

⁹⁸ ASBo, Podestà, Inquisitiones, busta 207, reg. 7, fol. 31v.

⁹⁹ Ibid., busta 280, reg. 3, fol. 24; busta 281, reg. 1, fol. 32.

from their mother's house – a bed 'furnished in peasant style', along with sheets, grain, tools and two animals – the mother later appeared and said that she had reached a 'satisfaction and concord' with her sons, and wished the case to proceed no further.¹⁰⁰

Across this period there were two major changes in the handling of theft prosecutions. The first came at the initiation of proceedings, with the gradual displacement of accusation by inquisition (see above, p. 37). The second change came in the punishment meted out to those found guilty. Excluding 'bans' issued against the contumacious, penalties actually imposed are not routinely recorded in the trial registers: they appear as brief marginal or terminal notes entered by the notary. Sometimes the notary wrote merely that a sentence was pronounced, without specifying whether it absolved or condemned the suspect. Some penalties are recorded baldly as 'executio personalis' (some form of corporal punishment) or 'condemnatio' (probably a fine). So the evidence is incomplete and obscure in parts. Nevertheless, some general trends seem clear. The number of cases with a recorded penalty was 104 for 1350–69, 70 for 1400–19 and 29 for 1450–69. Between the fourteenth century and the fifteenth century there was a reduction in corporal and capital penalties, and a rise in the non-afflictive penalties such as fines and banishment. In the 1350s and 1360s 12% of penalties were mutilations and 11% were whippings. Mutilations usually consisted of the perforation or amputation of ears, but there are examples too of the amputation of a foot or hand, and the removal of an eye.¹⁰¹ Capital punishment (mostly hanging) was imposed in 52% of the cases. In the fifteenth-century samples, by contrast, there is no mutilation for theft, and by the 1450s–60s whippings represented only 3% of punishments. Capital penalty too fell, first to 42% in 1400–19, then to 7% in 1450–69. The only aggravated death penalty occurred, significantly, in the middle of the fourteenth century, when Maleta, 'deserter, rebel, thief, highway-robber and murderer', 'captain, guide and promoter of all the thieves', was 'first hanged by a foot from a pole on a cart and led through the city, then hanged by the neck at the gallows, and his limbs cut by boys'.¹⁰² This trend runs completely opposite to that in Venice, where a reduction in whipping, branding and mutilation after the middle of the fourteenth century was offset by an increase in hangings.¹⁰³ In Bologna, instead of both mutilation

¹⁰⁰ Ibid., busta 358, reg. 1, fol. 54 (1451).

¹⁰¹ Ibid., busta 172, reg. 2, fol. 31; busta 175, reg. 4, fol. 111; busta 176, reg. 10, fol. 26; busta 178, reg. 8, fol. 12; busta 182, reg. 3, fol. 120; busta 184, reg. 5, fol. 109; busta 185, reg. 1, fol. 72 and reg. 4, fol. 42; busta 188, reg. 6, fol. 65.

¹⁰² Ibid., busta 193, reg. 1, fol. 23 (1361). ¹⁰³ Piasentini, *Alla luce della luna*, pp. 42–52.

and hanging, the penalties that increased relatively were fines (24% in both 1400–19 and 1450–69) and exile (4% and 7% in the two fifteenth-century samples).¹⁰⁴ It may be that these broad trends in punishment reflect trends in prosecution, even perhaps in the pattern of theft itself: the middle of the fifteenth century, for example, sees far fewer cases of multiple theft of the sort that incurred the death penalty. More evidently, however, the punishment pattern was influenced by the growth in merciful interventions by the city council and the papal governor (see above, p. 42). Death penalties were commuted to exile for a fixed term of years.¹⁰⁵ Prisoners awaiting punishment were released as ‘oblates’ to the city’s patron, San Petronio, or in honour of the visit to Bologna of the emperor.¹⁰⁶

So here is a major finding of this chapter’s study of the records of theft: fines, banishment and forms of pardon become more common, mutilation and death become rarer. Compare this gentler treatment of thieves with the greater severity threatened against sex criminals (above, pp. 138–9). How might we explain this? One possibility is that there was more sex crime and less theft. This might be suggested by the falling number of theft cases after 1370, but is impossible to prove for either crime. A second possibility is that governments, judges and local officials become less concerned about theft, and more concerned about sex crime. The close study of theft in one city also reveals again how suspects could attempt to challenge the judicial version of events and to redefine their actions (cf. other suspects, p. 173). On the one hand, the trial records can be used to reconstruct social history – the *modus operandi* of thieves, their disposal of goods, their discovery, their relations with victims – on the other hand, they also illuminate important issues in the history of the trial itself, especially extra-territoriality and the use of torture.

¹⁰⁴ For increased use of exile in Florence ‘for commonplace crimes and behaviour’ see Zorzi, ‘The judicial system in Florence in the fourteenth and fifteenth centuries’, p. 54.

¹⁰⁵ ASBo, Podestà, Inquisitiones, busta 362, reg. 1, fols. 45v, 56, 69 (1457).

¹⁰⁶ Ibid., busta 361, reg. 2, fol. 83 (1456); busta 358, reg. 1, fol. 92 (1452).

Conclusion

‘Research is interminable, but the text must have an ending’.¹ Conventionally, conclusions either summarise the findings of the research, or evaluate them retrospectively, stepping outside the narrative time of the history.² Here, I shall do both these things, while also stepping further, and reflecting on the historiographical methods used in this work.

One aim of this book has been to connect legal history with social history. Chapters on individual crimes have surveyed the evolution of relevant statute law and have used *consilia* to illuminate particular cases or issues. The individuality of legal sources has been recognised – their borrowings from Roman law, their dialogic relation with legal learning – but legal sources have also been combined with others in the writing of most of the chapters. One result of this has been to show how changes in the law relate to imaginative re-workings of an apparently real case of fornication, both sources embodying anxieties regarding parental control of daughters’ sexuality (pp. 61, 79–80).

A second aim has been to shift the centre of the historiography, away from Florence and Venice. It might be asked, ‘What has this book achieved that could not be achieved in a study of Florence or Venice?’ There could be two answers to that question, both related to variety and commonality of experience. First, the examination of patterns in the courts of four different cities has revealed the absence in this period of uniform development: the character of justice – inquisitorial, accusatorial, negotiated, repressive – varies both between cities and across time. Secondly, to take just one crime prominent in the historiography, a focus on Florence and Venice alone would give an inaccurate picture of the character and development of sex crime in this period. This comparative method (a third aim) has also shown that, contrary to conventional wisdom, the use of weapons was not a first

¹ M. de Certeau, *The Writing of History* (New York, 1988), p. 86.

² R. Barthes, ‘Le discours de l’histoire’, in *Le bruissement de la langue* (Paris, 1984), p. 156.

resort, and that the characterisation of society as 'prone to violence' is misleading. Moreover, one change in behaviour that a study of Florence and Venice would not reveal is the development of a new form of soldierly, knightly violence: the duel.

Finally, a focus on categories of crime and their evolution has shown that there was, cumulatively, a wide range of changes in criminal law, criminal justice, and their reception by contemporaries. There was increasing severity in many aspects of the law, marked by expressions of alarm and by heavier penalties: blasphemy, adultery, rape, clandestine marriage, sodomy, sorcery, door-scorning and charivari. For some of these changes of emphasis, the perceived damage to public order justified more restrictive laws and penalisation. The interests of public security came to prevail in some cases over the reparation of individual honour. But this can not be said of all of these changes: with adultery and rape, the injury remained that to the individual – husband, father, female victim. What this group of crimes seems to reflect, rather, is a stronger religious rationale (blasphemy, sodomy, sorcery), an increased sense of civic decorum (door-scorning, charivari), and a desire to protect marriage. They share a greater sense of the need for and value of public, official intervention, to contain, cleanse and protect. Secondly, there were changes in the administration of justice: the gradual displacement of accusations by inquisitions (where this occurred) changed the character of prosecuted justice: less insult, more theft and robbery; more crimes against the judicial apparatus (jail-breaking, resisting arrest, false testimony) and against the civic regime (conspiracy, political speech crimes). At the same time, this was accompanied or followed by a selective redistribution in the application of severity: compare the gentler treatment of thieves with the greater severity threatened against sex criminals (above, p. 199). How might we explain this? One possibility is that the borders of redeemability were redrawn: thieves were more likely to be seen as redeemable, hence their punishment through non-capital means, whereas sodomites and rapists were treated as irredeemable. Perhaps religiosity exercised an influence here, specifically the redeemability of robbers (a theme of many *exempla*, and suggested by the case of the penitent thief at Christ's crucifixion) and the affront to divinity caused by sodomy and rape. Lastly, there were changes in the reception of criminal justice: for example the Christian piety affecting the reporting of executions, and (conversely) the heightened appreciation of cruelty in punishing sex crimes.

Ricoeur has proposed three phases to the 'historical operation': a documentary phase, consisting of periodisation, testimony and proof; an

explicative phase, in which choice and variation of scale are important; and thirdly a literary phase, concerned with the narrative mode of the written history.³

As regards periodisation, I hope that readers will have noticed my studied avoidance of the word 'Renaissance'. Many authors – or their publishers – have found it hard to avoid the conjunction in their titles of 'Renaissance' and some aspect of criminality (thus Ruggiero, Brucker, Rocke, Cohn, even Dean and Lowe, though not Becker or Zorzi). Does 'Renaissance' mean anything when used as a qualifier for criminality or justice? The term carries with it connotations of awakening and modernity, even when the intention is to use it to refer only to a period. Even as a period, the use of the term 'Renaissance' is a curiosity. Marc Bloch noted how unusual it was in the labelling of periods of European history: usually, he remarks, it had been battles or the rise and fall of dynasties that furnished the general framework within which art and literature were fitted. With the Renaissance it is the reverse.⁴ But of course both operations – fitting art into a framework defined by dynasties, or dynasties into a framework defined by art – are artificial, and leave too much out of the picture. When we talk of any aspect of social history, for example, women or gender or poverty or crime – in what sense were these 'in' Renaissance Italy? To borrow a phrase from Bernard Lepetit, they weren't in Renaissance Italy 'like shoes in a box', for the reason that both the Renaissance and Italy are, in different ways, later constructs. We do well to remember that contemporaries had different systems for locating themselves in time and place, and that history-writing often involves shifting between those different systems, between (say) a religious time-frame (of saints' days, bells and religious services: Ricœur's chronometry) and historians' periodisations (chronosophy).⁵

A second aspect of Ricœur's 'documentary' phase is the character, status and usage of testimony. In examining these, Ricœur draws attention to the similarities and differences between judicial and historiographical usages. This is highly relevant in a history of justice. The judicial witness asserts the factual reality of an event, claims autopsy ('I was there'), in a dialogic situation with judges, defendant and jury ('Believe me'), and responds to contradictory testimony by repeating his assertions. When the record of this testimony is archived and later used by the historian, its character is transformed: 'testimony was originally oral; it was listened to. The archive

³ Ricœur, *La mémoire, l'histoire, l'oubli*, pp. 181–367.

⁴ Bloch, *Historian's Craft*, pp. 179–80. ⁵ Ricœur, *La mémoire, l'histoire, l'oubli*, pp. 191–200.

is writing; it is read.⁶ Moreover, by extension, testimony is distorted and layered: while still carrying its value in relation to an event, it is now used by the historian to assert the factual reality of *her* research in the archive ('I was there'), in a dialogic situation with the reader ('Believe me'), and is used non-repetitively to respond to other historiographical reconstructions. The focus of Ricœur on testimony justifies the unusual structure of this book, in which the character of different forms of evidence – judicial, legal, narrative – has been explored. Here, the role of fiction and narrative in all texts has been stressed: 'as if' fiction in statute law; the unambiguous, causal narration of indictments; the overlap between chronicle and novella.

This book has also employed variations of scale, switching between them with great frequency. Some of the writing may be said to be 'microhistorical', not because it deals with single cases, but because it examines individual stories of tactics, choice and uncertainty. Thus the strategies of criminals or of people in response to crime, or of defendants in the court-room: the alleged wife-killer Francesco (pp. 27–8), the victims of insult in Palermo (pp. 115–16), the bogus Jew Pasquale (p. 162), the battered wife Francesca (p. 175), the thief Simone Fortini (p. 188), servants who 'stole' their wages (pp. 188–9). Some of the writing considers broader contextual interpretation, at a conjunctural level: the effect on criminal justice of political developments and the presence of soldiers, or the effects of plague. Finally, longer-term transformations are addressed, for example the eclipse of accusatory trials by inquisitions, and the evolution of sorcery into witchcraft.

The last phase of Ricœur's historiography is narrative or representational. Here he insists on the fictional aspects of historical writing ('fictionalisation du discours historique'): not just the role of narrative, but the intertwining of 'readability' and 'visibility' ('le récit donne à comprendre et à voir').⁷ In order to maximise the visibility of the narrated past, I have kept my text close to the accounts given by the documents: quotations from indictments, testimony, chronicles, tales and legal materials; frequent reference to specific laws and specific cases. In order to optimise readability, I have occasionally used extraordinary material (the witness under the sodomites' bed, p. 98, the shocking insults, p. 113), but tried to place it in relation to the ordinary. More importantly I have used an eclectic range of references (from European history to contemporary sociology) and kept my interpretations in clear relation to the existing historiography.

⁶ Ibid., p. 209. ⁷ Ibid., p. 341.

Bibliography

PRINTED PRIMARY SOURCES

CONSILIA (ALPHABETICALLY BY FIRST NAME OF AUTHOR)

- Alexander Imolensis, *Consilia* (Venice, 1477)
Angelus de Ubaldis, *Consilia* (Pavia, 1499)
Baldus de Ubaldis, *Consilia* (Lyon, 1559)
Consilia criminalia celeberrimi ac prestantissimi utriusque juris illuminatoris domini Bartholomei Cepole Veronensis (1531)
Consilia questiones et tractatus Bartoli cum additionibus novis (Venice, 1495)
Consilia domini Benedicti Caprae et Ludovici de Bologninis (Lyon, 1556)
Fredericus de Petruciiis, *Consilia* (Siena, 1488)
Johannis Calderini et Gasparis eius filii ed Dominici de Sancto Geminiano Consilia (1491)
Johannes de Anania, *Consilia* (1534)
Laurentius Calcanei, *Consilia* (Lyon, 1549)
Ludovicus [de Pontanis] de Roma, *Consilia* (Venice, 1493)
Oldradus de Ponte, *Consilia* (Venice, 1490)
Paulus de Castro, *Consilia* (Venice, 1489)
Petrus de Ancharano, *Consilia* (Rome, 1474)
Consilia ac questiones famosissimi utriusque iuris monache domini Signoroli de Homodeis (Milan, 1521)

STATUTES (ALPHABETICALLY BY CITY OR REGION)

- Codex statutorum magnifice communitatis atque dicaesis Alexandrinae* (Alessandria, 1547)
Statuta civitatis Aquile, ed. A. Clementi (Rome, 1977)
Statuto di Arezzo (1327), ed. G. Marri Camerani (Florence, 1946)
Statuti di Ascoli Piceno dell'anno MCCCCLXXVII, ed. L. Zdekauer and P. Sella (Rome, 1910)
Capitula, statuta et ordinamenta [civitatis Ast] (1534)
Statuti di Belluno del 1392, ed. E. Bacchetti (Rome, 2002)
Statuta civitatis Beneventi (Benevento, 1717)
Lo statuto di Bergamo del 1331, ed. C. Storti Storchi (Milan, 1986)

- Statuti di Bologna dell'anno 1288*, ed. G. Fasoli and P. Sella (Vatican, 1937)
Gli statuti del Comune di Bologna degli anni 1352, 1357, 1376, 1389 (Libri I–III), ed. V. Braidì (2 vols., Bologna, 2002)
Leges brixianae (1490)
Statuta floride et alme civitatis Cesene (Brescia, 1473)
Statuto di Como del 1335. Volumen magnum, ed. G. Manganelli (Como, 1936)
Le additiones agli statuti di Cuneo del 1380, ed. D. Sacchetto (Cuneo, 1999)
Statuto di Deruta in volgare dell'anno 1465, ed. M. G. Nico Ottaviani (Spoleto, 1991)
Lo statuto comunale di Fabriano (1415), ed. G. Avarucci and U. Paoli (Fabriano, 1999)
Statuto del Capitano del Popolo degli anni 1322–1325, in *Statuti della repubblica fiorentina*, ed. G. Pinto, F. Salvestrini and A. Zorzi (Florence, 1999)
Statuto del podestà dell'anno 1325, in *Statuti della repubblica fiorentina*, ed. G. Pinto, F. Salvestrini and A. Zorzi (Florence, 1999)
Statuto di Forlì dell'anno MCCCCLIX, ed. E. Rinaldi (Rome, 1913)
U. Santini, 'Gli statuti di Fossano', *Bollettino storico-bibliografico subalpino*, 12 (1907)
Statuta et decreta commmunis Genuae (Bologna, 1498)
Statuti del comune di Ivrea, ed. G. S. Pene-Vidari (3 vols., Turin, 1968–74)
Statutum lucani comunis an. 1308 (1867, repr. Lucca, 1991)
Statuta lucensis civitatis (Lucca, 1490)
Antiqua ducum Mediolani decreta (Milan, 1644)
Statuta civitatis Mutine anno 1327 reformata (Parma, 1864)
Decretorum Montisferrati antiquorum et novorum . . . collectio, ed. I. H. Saletta (1675)
Pragmaticae regni novae et antiquae (Naples, 1551)
Ritus magnae curiae (Naples, 1551)
Capitula regni Siciliae (Naples, 1551)
Constitutiones regni Siciliae per . . . Andream de Ysernia comentatae . . . (Naples, 1552)
Statuta patavina (Venice, 1528)
Statuta communis Parmae [1254] (Parma, 1855)
Statuta communis Parmae ab anno MCCLXVI ad annum circiter MCCCIV, ed. A. Ronchini (Parma, 1857)
Statuti di Perugia dell'anno MCCCXLII, ed. G. Degli Azzi (2 vols., Rome, 1913–16)
Statuta varia civitatis Placentiae, ed. G. Bonora (Parma, 1860)
Statuti del comune di Ravenna, ed. A. Tarlazzi (Ravenna, 1886)
Consuetudini e statuti Reggiani del secolo XIII, ed. A. Cerlini (Milan, 1933)
Statuti della città di Roma, ed. C. Re (Rome, 1880)
Statuta antiquissima Saone, ed. L. Balletto (Genova, 1971)
Decreta Sabaudie ducalia (Turin, 1477)
Capitula regni Siciliae, ed. F. Testa (Palermo, 1741)
Antiche consuetudini delle città di Sicilia, ed. V. La Mantia (Palermo, 1900)
Statuta civitatis Verone (Vicenza, 1475)
Statuti del comune di Vicenza MCCLXIV, ed. F. Lampertico (Venice, 1886)

CHRONICLES (ALPHABETICALLY BY CITY)

- Cronaca di Niccolò di Borbona delle cose dell'Aquila, dall'anno 1363 all'anno 1424*, in *Antiquitates italicæ medii ævi*, ed. L. A. Muratori, vol. 6 (Milan, 1742)
- Chronicon bergomense guelfo-ghibellinum*, ed. C. Capasso, in *Rerum italicarum scriptores*, 2nd series, vol. 16, pt 2 (Bologna, 1926–)
- Corpus chronicorum bononiensium*, ed. A. Sorbelli, *Rerum italicarum scriptores*, 2nd series, vol. 18, pt 1 (Città di Castello and Bologna, 1906–40)
- Diario bolognese di Gaspare Nadi*, ed. C. Ricci and A. Bacchi della Lega (Bologna, 1886)
- Cronica gestorum et factorum memorabilium civitatis Bononie edita a fratre Hyeronimo de Bursellis*, ed. A. Sorbelli, *Rerum italicarum scriptores*, 2nd series, vol. 23, pt 2 (Città di Castello, 1912–19)
- Le cronache bresciane inedite dei secoli XV–XIX*, ed. P. Guerrini, vol. 1 (Brescia, 1922)
- Diario ferrarese dall'anno 1476 sino al 1502 di autori incerti*, ed. G. Pardi, *Rerum italicarum scriptores*, 2nd series, vol. 24, pt 7 (Bologna, 1928–33)
- Bernardino Zambotti, *Diario ferrarese dall'anno 1476 sino al 1504*, ed. G. Pardi, *Rerum italicarum scriptores*, 2nd series, vol. 24, pt 7 (Bologna, 1934–7)
- Diario di Ugo Caleffini (1471–1494)*, ed. G. Pardi (2 vols., Ferrara, 1938)
- Annales estenses Jacobi de Delayto*, in *Rerum italicarum scriptores*, ed. L. A. Muratori, vol. 18 (Milan, 1731)
- Cronaca fiorentina di Marchionne di Coppo Stefani*, ed. N. Rodolico, in *Rerum italicarum scriptores*, 2nd series, vol. 30, pt 1 (Città di Castello, 1903–55)
- 'Diario d'anonimo fiorentino dall'anno 1358 al 1389', ed. A. Gherardi, in *Cronache dei secoli XIII e XIV* (Florence, 1876)
- Giovanni di Maestro Pedrino depintore, *Cronica del suo tempo*, ed. G. Borghезio and M. Vattasso (2 vols., Rome, 1929–34)
- Le croniche di Giovanni Sercambi*, ed. S. Bongi (3 vols., Lucca, 1892)
- Cronaca modenese di Jacobino de' Bianchi*, ed. C. Borghi (Parma, 1861)
- Una cronaca napoletana figurata del Quattrocento*, ed. R. Filangieri (Naples, 1956)
- Cronaca di Partenope*, ed. A. Altamura (Naples, 1974)
- G. De Blasiis, 'Tre scritture napoletane del secolo xv', *Archivio storico per le provincie napoletane*, 4 (1879)
- I diurnali di Matteo Spinelli di Giovinnazzo (1247–1268)*, in *Cronisti e scrittori sincroni napoletani*, ed. G. Del Re (2 vols., Naples, 1845–68)
- Cronica di Napoli di notar Giacomo*, ed. P. Garzilli (Naples, 1845)
- Diario di ser Tommaso di Silvestro*, in *Ephemerides urbevetanæ*, ed. L. Fumi, *Rerum italicarum scriptores*, 2nd series, vol. 15, pt 5, vol. 2
- Galeazzo and Bartolomeo Gatari, *Cronaca carrarese*, ed. A. Medin and G. Tolomei, *Rerum italicarum scriptores*, 2nd series, vol. 17, pt 1
- Liber regiminum Padue*, ed. G. Carducci and V. Fiorini, in *Rerum italicarum scriptores*, 2nd edn, vol. 8, pt 1 (Città di Castello, 1945–7)
- Guillelmus de Cortusiis, *Chronica de novitatibus Paduæ et Lombardiae*, ed. B. Pagnin, *Rerum italicarum scriptores*, vol. 12, pt 5 (Bologna, 1941–75)

- Diarium parmense*, in *Rerum italicarum scriptores*, ed. L. A. Muratori, vol. 22 (Milan, 1733)
- Chronicon parmense*, ed. G. Bonazzi, *Rerum italicarum scriptores*, 2nd edn, vol. 9, pt 9 (Città di Castello, 1902–4)
- ‘Cronaca della città di Perugia dal 1309 al 1491 nota col nome di diario del Graziani’, ed. A. Fabretti, *Archivio storico italiano*, 16 (1850)
- ‘Cronaca perugina inedita di Pietro Angelo di Giovanni’, ed. O. Scalvanti, *Bollettino della Deputazione di storia patria per l’Umbria*, 4 (1898) and 9 (1903)
- Cronaca di Pisa di Ranieri Sardo*, ed. O. Banti (Rome, 1963)
- Chronicon regiense*, in *Rerum italicarum scriptores*, ed. L. A. Muratori, vol. 18 (Milan, 1731)
- Il diario romano di Antonio di Pietro dello Schiavo*, ed. F. Isoldi, in *Rerum italicarum scriptores*, 2nd series, vol. 24, pt 5 (Città di Castello, 1917)
- Diario della città di Roma di Stefano Infessura scribasenato*, ed. O. Tommasini (Rome, 1890)
- Il diario della città di Roma dall’anno 1480 all’anno 1492 di Antonio de Vascho*, ed. G. Chiesa, *Rerum italicarum scriptores*, 2nd series, vol. 23, pt 3 (Città di Castello, 1910–11)
- Michele da Piazza, *Cronaca*, ed. A. Giuffrida (Palermo, 1980)
- Bibliotheca scriptorum qui res in Sicilia gestas sub Aragonum imperio retulere*, ed. R. Gregorio (2 vols., Palermo, 1791–2)
- Diarium senense Allegretti de Allegretis*, ed. L. A. Muratori, in *Rerum italicarum scriptores*, vol. 23
- Cronache senesi*, ed. A. Lisini and F. Iacometti, *Rerum italicarum scriptores*, 2nd series, vol. 15, pt 6 (Bologna, 1931–)
- Nicolai Smeregli vincentini annales civitatis Vincentiae*, ed. G. Soranzo, in *Rerum italicarum scriptores*, 2nd edn, vol. 8, pt 5 (Bologna, 1921)

FICTION

- Motti e facezie del piovano Arlotto*, ed. G. Folena (Milan and Naples, 1995)
- Arienti, Sabadino, degli, *Le Porretane*, ed. B. Basile (Rome, 1981)
- Bracciolini, Poggio, *Facezie*, ed. M. Ciccuto (Milan, 1983)
- Sacchetti, Franco, *Il Trecentonovelle*, in *Opere*, ed. A. Borlenghi (Milan, 1957)
- Salernitano, Masuccio, *Novellino*, ed. S. S. Nigro (Milan, 1990)
- Sercambi, Giovanni, *Novelle*, ed. G. Sinicropi (Bari, 1972)

OTHER PRINTED PRIMARY SOURCES (ALPHABETICALLY BY NAME OF EDITOR)

- ‘Al’, ‘Patente per duello’, *Miscellanea storica senese*, 3 (1895)
- Asidei, V., *Regestum reformationum comunis Perusii ab anno MCCLVI ad annum MCCC*, (Perugia, 1935)
- Bagli, G., ‘Bandi malatestiani’, *Atti e memorie della Deputazione di storia patria per la Romagna*, 3rd ser., 3 (1884–5)

- Corrao, P., *Acta curiae felicitis urbis Panormi* (12 vols., Palermo, 1982–96), vol. 5, *Registri di lettere ed atti (1328–1333)* (1986)
- Ferorelli, N., *I registri dell'ufficio degli statuti di Milano* (Milan, 1920)
- Kantorowicz, H. U., *Albertus Gandinus und das Strafrecht der Scholastik* (2 vols., Berlin, 1907–26)
- Lagumina, B. and G. Lagumina, *Codice diplomatico dei giudei di Sicilia* (Palermo, 1884)
- Mammoli, D., *Processo alla strega Matteuccia di Francesco, 20 marzo 1428* (Todi, 1969)
- Digest of Justinian*, ed. and trans. T. Mommsen, P. Krueger and A. Watson (4 vols., Philadelphia, 1985)
- Nani Mocenigo, F., *Capitolare dei Signori di notte* (Venice, 1877)
- Pollaci Nuccio, F., and D. Gnoffo, *Acta curie felicitis urbis Panormi*, vol. 1, *Registri di lettere gabelle e petizioni 1274–1321* (Palermo, 1982)
- Riva, C., *Bandi cesenati (1431–1473)* (Bologna, 1993)
- Roberti, M., *Le magistrature giudiziarie veneziane e i loro capitolari fino al 1300* (3 vols., Venice, 1907–11)
- Romiti, A., *Riformagioni della Repubblica di Lucca (1369–1400)* vol. 1 (Rome, 1980)
- Santoro, C., *La politica finanziaria dei Visconti: Documenti*, vol. 1 (Varese, 1976)
- Sardina, P., *Acta curie felicitis urbis Panormi*, vol. 12, *Registri di lettere atti bandi e ingiunzioni (1400–1401 e 1406–1408)* (Palermo, 1996)
- Shaw, C., 'Provisions following "Proposte generali" 1436 and 1456', in *Siena e il suo territorio nel Rinascimento*, vol. 3, ed. M. Ascheri (Siena, 2000)
- Theiner, A., *Codex diplomaticus dominii temporalis S. Sedis* (3 vols., Rome, 1861–2)
- Zolli, P., *Podestà di Torcello Domenico Vigliari (1290–1291)* (Venice, 1966)

B. SECONDARY WORKS

- Alessi Palazzolo, G., *Prova legale e pena: la crisi del sistema tra Medioevo e moderno* (Naples, 1979)
- Antonelli, G., 'La magistratura degli Otto di Guardia a Firenze', *Archivio storico italiano*, 112 (1954)
- Arnold, J., 'The historian as inquisitor: the ethics of interrogating subaltern voices', *Rethinking History*, 2 (1998)
- Arnold, J., *Inquisition and Power: Catharism and the Confessing Subject in Medieval Languedoc* (Philadelphia, 2001)
- Artocchini, C., 'Presenze ebraiche a Piacenza nell'alto e basso Medioevo', *Archivio storico per le province parmensi*, 4th ser., 44 (1992)
- Ascheri, M., 'La pubblicazione degli statuti: un'ipotesi di intervento', *Nuova rivista storica*, 69 (1985)
- 'La decisione nelle corti giudiziarie italiane del Tre-Quattrocento e il caso della Mercanzia di Siena', in *Judicial Records, Law Reports and the Growth of Case Law*, ed. J. H. Baker (Berlin, 1989)

- 'Le fonti e la flessibilità del diritto comune: il paradosso del *consilium sapientis*', in *Legal Consulting in the Civil Law Tradition*, ed. M. Ascheri, I. Baumgärtner and J. Kirshner (Berkeley, 1999)
- Backman, C. R., *The Decline and Fall of Medieval Sicily: Politics, Religion and Economy in the Reign of Frederick III, 1296–1337* (Cambridge, 1995)
- Barbero, A., 'Gruppi e rapporti sociali', in *Storia di Torino*, vol. 2, *Il basso Medioevo e la prima età moderna (1280–1536)*, ed. R. Comba (Turin, 1977)
- Baron, S. W., *Ancient and Medieval Jewish History* (New Brunswick, 1972)
- Barthes, R., 'Le discours de l'histoire', in *Le bruissement de la langue* (Paris, 1984)
- Bartlett, R., *The Hanged Man: A Story of Miracle, Memory and Colonialism in the Middle Ages* (Princeton, 2004)
- Bec, C., *Cultura e società a Firenze nell'età della Rinascenza* (Rome, 1981)
- Becker, M. B., 'Changing patterns of violence and justice in fourteenth- and fifteenth-century Florence', *Comparative Studies in Society and History*, 18 (1976)
- Bei, A., 'La giustizia penale a Montone alla metà del xiv secolo negli statuti del comune e nei registri giudiziari', *Bollettino della Deputazione di storia patria per l'Umbria*, 93 (1996)
- Bellabarba, M., *La giustizia ai confini: il principato vescovile di Trento agli inizi dell'età moderna* (Bologna, 1996)
- 'Pace pubblica e pace privata', in *Criminalità e giustizia in Germania e in Italia: Pratiche giudiziarie e linguaggi giuridici tra tardo medioevo ed età moderna*, ed. M. Bellabarba, G. Schwerhoff and A. Zorzi (Bologna, 2001)
- Bellomo, M., *Società e istituzioni in Italia fra Medioevo ed età moderna* (Catania, 1977)
- Medioevo edito ed inedito*, vol. 2, *Scienza del diritto e società medievale* (Rome, 1997)
- I fatti e il diritto: tra le certezze e i dubbi dei giuristi medievali (secoli XIII–XIV)* (Rome, 2000)
- Benzoni, E., 'La crudeltà nelle novelle italiane del '500: qualche spunto', *Atti dell'Istituto veneto di scienze, lettere ed arti*, 152 (1993–4)
- Beretta, G., 'Giovanni Sercambi e il Boccaccio', *Bibliothèque d'Humanisme et de Renaissance*, 33 (1971)
- Billacois, F., *Le duel dans la société française des XVIe–XVIIe siècles* (Paris, 1986)
- Bonfiglio Dosio, G., 'Criminalità ed emarginazione a Brescia nel primo Quattrocento', *Archivio storico italiano*, 136 (1978)
- Bongi, S., 'Le schiave orientali in Italia', *Nuova antologia*, 2 (1866)
- Bowsky, W. M., 'The medieval comune and internal violence: police power and public safety in Siena, 1287–1355', *American Historical Review*, 73 (1967)
- Bratchel, M. B., *Lucca 1430–1494: The Reconstruction of an Italian City-Republic* (Oxford, 1995)
- Bresc, H., *Un monde méditerranéen: Economie et société en Sicile 1300–1450* (Rome, 1986)

- Brown, A., 'De-civilizing the Renaissance', *Bulletin of the Society for Renaissance Studies*, 15:1 (1997)
- Brucker, G. A., 'Sorcery in the Renaissance', *Studies in the Renaissance*, 10 (1963)
The Society of Renaissance Florence (New York, 1971)
- Brundage, J. A., *Law, Sex and Christian Society in Medieval Europe* (Chicago and London, 1987)
- 'Intermarriage between Christians and Jews in medieval canon law', *Jewish History*, 3 (1988)
- Bruno, A., *Storia di Savona dalle origini ai nostri giorni* (Savona, 1901)
- Buscarini, C., 'Marino Calcagni, *legum doctor*: un sammarinese fra Montefeltro e Malatesti (1427-1464)', *Studi romagnoli*, 45 (1994)
- Caduff, C., 'I "publici latrones" nella città e nel contado di Firenze a metà Trecento', *Ricerche storiche*, 18 (1988)
- Cammarosano, P., *Italia medievale: struttura e geografia delle fonti scritte* (Rome, 1991)
- Campitelli, A., 'Il *Tractatus de cicatricibus* di Francesco Albergotti attribuito a Bartolo da Sassoferrato', *Annali di storia del diritto*, 8 (1964)
- Caprioli, S., 'De "modis arguendis" scripta varia', *Studi senesi*, 75 (1963)
- 'La miscellanea romana dell'Archivio di Stato (MS 1004)', in G. D'Amelio, A. Campitelli, S. Caprioli and F. Martino, *Studi sulle 'quaestiones' civilistiche disputate nelle università medievali* (Catania, 1980)
- Cardini, F., 'Magia e stregoneria nella Toscana del Trecento', *Quaderni medievali*, 5 (1978)
- Carey, C., *Trials from Classical Athens* (London, 1997)
- Casali, A., 'L'amministrazione del contado lucchese nel '400: il Capitano del contado', *Actum luce*, 7 (1978)
- 'Aspetti della criminalità nel contado lucchese intorno alla metà del 1400, secondo i registri del "Capitaneus comitatus"', *Annuario Biblioteca civica di Massa*, 1981
- Cavina, M., *Il sangue dell'onore: storia del duello* (Rome and Bari, 2005)
- Cecchetti, B., 'La donna nel Medioevo a Venezia', *Archivio veneto*, 31 (1886)
- Chambers, D. S., and T. Dean, *Clean Hands and Rough Justice: An Investigating Magistrate in Renaissance Italy* (Ann Arbor, 1997)
- Cherubini, G., 'Vita trecentesca nelle novelle di Giovanni Sercambi', in Cherubini, *Signori, contadini, borghesi: ricerche sulla società italiana del basso Medioevo* (Florence, 1974)
- Ciardini, M., *I banchieri ebrei in Firenze nel secolo XV e il Monte di Pietà fondato da Girolamo Savonarola* (Borgo S. Lorenzo, 1907)
- Cibrario, L., *Delle istorie di Chieri libri quattro* (2 vols., Turin, 1827)
Della economia politica del Medio Evo (2 vols., Turin, 1861)
- Clements, R. J., and J. Gibaldi, *Anatomy of the Novella: The European Tale Collection from Boccaccio and Chaucer to Cervantes* (New York, 1977)
- Cohen, E., *The Crossroads of Justice: Law and Culture in Late Medieval France* (Brill, 1993)
- 'Towards a history of European physical sensibility: pain in the later Middle Ages', *Science in Context*, 8 (1995)

- Cohen, S., *Images of Deviance* (Harmondsworth, 1971)
- Cohn, S., 'Criminality and the state in Renaissance Florence, 1344–1466', *Journal of Social History*, 14 (1980)
- Women in the Streets: Essays on Sex and Power in Renaissance Italy* (Baltimore and London, 1996)
- Creating the Florentine State: Peasants and Rebellion, 1348–1434* (Cambridge, 1999)
- Collard, F., *Le crime de poison au Moyen Age* (Paris, 2003)
- Comba, R., "Apetitus libidinis coherceatur". Strutture demografiche, reati sessuali e disciplina dei comportamenti nel Piemonte tardo-medioevale', *Studi storici*, 27:3 (1986)
- Comparato, V. I., 'Il controllo del contado a Perugia nella prima metà del Quattrocento: capitani, vicari e contadini tra 1428 e 1450', in *Forme e tecniche del potere nella città (secoli XIV–XVII)* (Perugia, 1980)
- Corsaro, A., 'Cultura e meccanismi narrativi del *Trecentonovelle* di Franco Sacchetti', *Filologia e critica*, 6 (1981)
- Corsi, D., 'Una "maliarda" a Fiesole alla fine del Duecento', *Quaderni medievali*, 26 (1988)
- Cortese, E., *Il diritto nella storia medievale* (Rome, 1995)
- Craun, E. D., "Inordinata locutio": blasphemy in pastoral literature, 1200–1500', *Traditio*, 39 (1983)
- Crouzet-Pavan, E., 'Violence, société et pouvoir à Venise (xive–xve siècles): forme et évolution de rituels urbains', *Mélanges de l'Ecole Française de Rome, Moyen Age*, 96 (1984)
- Cutini, C., 'Giudici e giustizia a Perugia nel secolo XIII', *Bolletino della Deputazione di storia patria per l'Umbria*, 83 (1986)
- Davidson, N., 'Theology, nature and the law: sexual sin and sexual crime in Italy from the fourteenth to the seventeenth century', in *Crime, Society and the Law in Renaissance Italy*, ed. T. Dean and K. J. P. Lowe (Cambridge, 1994)
- Davis, N. Z., 'Les conteurs de Montaillou', *Annales*, 34 (1979)
- Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France* (Cambridge, 1988)
- Dean, T., 'Criminal justice in mid-fifteenth-century Bologna', in *Crime, Society and the Law in Renaissance Italy*, ed. T. Dean and K. J. P. Lowe (Cambridge, 1994)
- 'Marriage and mutilation: vendetta in late-medieval Italy', *Past & Present*, 157 (1997)
- 'Fathers and daughters: marriage laws and marriage disputes in Bologna and Italy, 1200–1500', in *Marriage in Italy, 1300–1650*, ed. T. Dean and K. J. P. Lowe (Cambridge, 1998)
- Crime in Medieval Europe* (Harlow, 2001)
- 'Ferrarese chroniclers and the Este state, 1490–1505', in *Phaeton's Children: The Este Court and its Culture in Early Modern Ferrara*, ed. D. Looney and D. Shemek (Tempe, 2005)
- De Benedictis, A., *Repubblica per contratto. Bologna: una città europea nello Stato della Chiesa* (Bologna, 1995)

- de Certeau, M., *The Writing of History* (New York, 1988)
- De Frede, C., 'Ferrante d'Aragona e la caccia, con alcune considerazioni politico-sociali', *Archivio storico per le provincie napoletane*, 115 (1997)
- Della Misericordia, M., 'Giudicare con il consenso: giustizia vescovile, pratiche sociali e potere politico nella diocesi di Como nel tardo medioevo', *Archivio storico ticinese*, 38 (2001)
- Dezza, E., 'Gli statuti di Tortona', *Studia et documenta historiae et iuris*, 43 (1977)
- Dinges, M., 'Usi della giustizia come elemento di controllo sociale', in *Criminalità e giustizia in Germania e in Italia: Pratiche giudiziarie e linguaggi giuridici tra tardo medioevo ed età moderna*, ed. M. Bellabarba, G. Schwerhoff and A. Zorzi (Bologna, 2001)
- Di Renzo Villata, M. G., 'Scienza giuridica e legislazione nell'età sforzesca', in *Gli Sforza a Milano e in Lombardia e i loro rapporti con gli stati italiani ed europei (1450-1535)* (Milan, 1982)
- 'La vita del diritto nella Milano del tardo Quattrocento', in *Milano nell'età di Ludovico il Moro* (Milan, 1983)
- Dorini, U., *Il diritto penale e la delinquenza in Firenze nel sec. XIV* (Lucca, n.d.)
- Duke, F., and P. Stigant, '"... when so much of it is invention": history and literature', *Literature and History*, 11 (1985)
- Epstein, S. A., 'A late medieval lawyer confronts slavery: the cases of Bartolomeo de Bosco', *Slavery and Abolition*, 20:3 (1999)
- Speaking of Slavery: Color, Ethnicity and Human Bondage in Italy* (Cornell, 2001)
- Espósito, A., 'Gli Ebrei a Roma nella seconda metà del '400', in *Aspetti e problemi della presenza ebraica nell'Italia centro-settentrionale (secoli XIV e XV)* (Rome, 1983)
- Fabbrini, B., 'La deposizione di Gesù nel sepolcro e il problema del divieto di sepoltura per i condannati', *Studia et Documenta Historiae et Iuris*, 61 (1995)
- Fasoli, G., 'Edizione e studio degli statuti: problemi ed esigenze', in *Fonti medioevali e problematica storiografica* (Rome, 1976)
- Ferorelli, N., *Gli ebrei nell'Italia meridionale dall'età romana al secolo XVIII* (Turin, 1915)
- Fineschi, F., 'La rappresentazione della morte sul patibolo nella liturgia fiorentina della congregazione dei Neri', *Archivio storico italiano*, 150 (1992)
- Flandina, A., 'Donna Aldonza di Santapau: notizie cavate da documenti inediti', *Archivio storico siciliano*, new ser., 3 (1878)
- Forni, P. M., 'Retorica del reale nel "Decameron"', *Studi sul Boccaccio*, 17 (1988)
- Fraher, R. M., 'Preventing crime in the High Middle Ages: the medieval lawyers' search for deterrence', in *Popes, Teachers and Canon Law in the Middle Ages*, ed. J. Ross Sweeney and S. Chodorow (Ithaca and London, 1989)
- Franceschini, G., *I Montefeltro* (Varese, 1970)
- Freeman, M., and A. D. E. Lewis (eds.), *Law and Literature* (Oxford, 1999)
- Fried, C., 'The *Lex Aquilia* as a source of law for Bartolus and Baldus', *American Journal of Legal History*, 4 (1960)
- Gabotto, F., 'Le streghe di Buriasco e di Cumiana (1314-1336)', *Bollettino storico-bibliografico subalpino*, 9 (1904)

- Gauvard, C., *'De grace especial': Crime, état et société en France à la fin du Moyen Age* (Paris, 1991)
- Genicot, L., *La loi* (Turnhout, 1977)
- Gentilcore, D., *Healers and Healing in Early Modern Italy* (Manchester, 1998)
- Ginatempo, M., and L. Sandri, *L'Italia delle città. Il popolamento urbano tra Medioevo e Rinascimento (secoli XIII–XVI)* (Florence, 1990)
- Ginzburg, C., 'Deciphering the Sabbath', in *Early Modern European Witchcraft: Centres and Peripheries*, ed. B. Ankarloo and G. Henningsen (Oxford, 1990)
- Ecstasies: Deciphering the Witches' Sabbath* (London, 1990)
- Giuffrida, A., 'Giustizia e società', in *Storia della Sicilia* (10 vols., Naples, 1977–81), vol. 3
- Goodrich, P., *Legal Discourse: Studies in Linguistics, Rhetoric and Legal Analysis* (Basingstoke, 1987)
- Gravdal, K., *Ravishing Maidens: Writing Rape in Medieval French Literature and Law* (Philadelphia, 1991)
- Green, L., *Lucca under many Masters: A Fourteenth-century Italian Commune in Crisis (1328–1342)* (Florence, 1995)
- Grendi, E., 'Per lo studio della storia criminale', *Quaderni storici*, 44 (1980)
- Guarducci, P., and V. Ottanelli, *I servitori domestici della casa borghese toscana nel basso medioevo* (Florence, 1982)
- Guenée, B., 'Introduction', in *L'historiographie médiévale en Europe*, ed. J.-P. Genet (Paris, 1991)
- 'Histoires, annales, chroniques: essai sur les genres historiques au Moyen Age', *Annales*, 28 (1973)
- Gundersheimer, W. L., 'Crime and punishment in Ferrara, 1440–1500', in *Violence and Civil Disorder in Italian Cities, 1200–1500*, ed. L. Martines (Berkeley, 1972)
- Hanawalt, B. A., 'Ballads and bandits: fourteenth century outlaws and the Robin Hood poems', in *Robin Hood: An Anthology of Scholarship and Criticism*, ed. S. Knight (Cambridge, 1999)
- Hassell, J. W., *Middle French Proverbs, Sentences and Proverbial Phrases* (Toronto, 1982)
- Herlihy, D., 'Some psychological and social roots of violence in the Tuscan cities', in *Violence and Civil Disorder*, ed. Martines
- Heers, J., *Le clan familial au Moyen Age* (Paris, 1974)
- Hoareau Dodinau, J., 'Le blasphème au Moyen Age: une approche juridique', in *L'invective au Moyen Age: France, Espagne, Italie*, ed. E. Beaumartin and M. Garcia (Paris, 1995)
- Horodowich, E., 'Civic identity and the control of blasphemy in sixteenth-century Venice', *Past & Present*, 181 (2003)
- Hughes, S., 'Fear and loathing in Bologna and Rome: the papal police in perspective', *Journal of Social History*, 21 (1987–8)
- Invernizzi, C., 'Gli ebrei a Pavia', *Bollettino della Società pavese di storia patria*, 5 (1905)
- Jones, P. J., *The Malatesta of Rimini and the Papal State* (Cambridge, 1974)
- Kelly, S., *The New Solomon: Robert of Naples (1309–1343) and Fourteenth-Century Kingship* (Leiden, 2003)

- Kieckhefer, R., *European Witch Trials: Their Foundations in Popular and Learned Culture, 1300–1500* (London, 1976)
- Kirshner, J., 'Some problems in the interpretation of legal texts in the Italian city-states', *Archiv für Begriffsgeschichte*, 19 (1975)
- 'A consilium of Rosello dei Roselli on the meaning of "Florentinus", "de Florentia" and "de populo"', *Bulletin of Medieval Canon Law*, 6 (1976)
- '*Consilia* as authority in late medieval Italy: the case of Florence', in *Legal Consulting in the Civil Law Tradition*, ed. M. Ascheri, I. Baumgärtner and J. Kirshner (Berkeley, 1999)
- Klapisch-Zuber, C., 'Women servants in Florence during the fourteenth and fifteenth centuries', in *Women and Work in Preindustrial Europe*, ed. B. A. Hanawalt (Bloomington, 1986)
- Kuehn, T., *Illegitimacy in Renaissance Florence* (Ann Arbor, 2002)
- Labalme, P. H., 'Sodomy and Venetian justice in the Renaissance', *Tijdschrift voor Rechtsgeschiedenis*, 52 (1984)
- LaCapra, D., *History and Criticism* (Ithaca and London, 1985)
- La Mantia, V., 'Notizie e documenti su le consuetudini delle città di Sicilia', *Archivio storico italiano*, 4th ser., 7 (1881)
- Lamarque, P., and S. H. Olsen, *Truth, Fiction and Literature: A Philosophical Perspective* (Oxford, 1994)
- Lansing, C., 'Concubines, lovers, prostitutes: infamy and female identity in medieval Bologna', in *Beyond Florence: The Contours of Medieval and Early Modern Italy*, ed. P. Findlen, M. M. Fontaine and D. J. Osheim (Stanford, Ca., 2003)
- Larner, J., 'Order and disorder in Romagna, 1450–1500', in *Violence and Civil Disorder in Italian Cities*, ed. Martines
- Lazzarini, I., 'Il diritto urbano in una signoria cittadina: gli statuti mantovani dai Bonacolsi ai Gonzaga (1313–1404)', in *Statuti città territori in Italia e Germania tra Medioevo ed età moderna*, ed. G. Chittolini and D. Willoweit (Bologna, 1991)
- Fra un principe e altri stati: relazioni di potere e forme di servizio al Mantova nell'età di Ludovico Gonzaga* (Rome, 1996)
- Lee, A. C., *The Decameron: Its Sources and Analogues* (London, 1909)
- Lesnick, D. R., 'Insults and threats in medieval Todi', *Journal of Medieval History*, 17 (1991)
- Leveleux, C., *La parole interdite. Le blasphème dans la France médiévale (XIIIe–XVIe siècles): du péché au crime* (Paris, 2001)
- Leverotti, F., 'Ricerche sull'amministrazione della vicaria di Massa alla fine del XIV secolo', *Annuario Biblioteca civica di Massa*, 1980
- "Governare a modo e stillo de' Signori . . .". Osservazioni in margine all'amministrazione della giustizia al tempo di Galeazzo Maria Sforza duca di Milano (1466–76)', *Archivio storico italiano*, 152 (1994)
- Lindorfer, B., 'Peccatum linguae and the punishment of speech violations in the Middle Ages and early modern times', in *Speaking in the Medieval World*, ed. J. E. Godsall-Myers (Leiden, 2003)

- Longhi, M., 'Niccolò Piccinino in Bologna 1438–1442', *Atti e memorie della Deputazione di storia patria per la Romagna*, 3rd series, 24 (1905–6)
- Lucchesi, M., *Si quis occidit occidetur: L'omicidio doloso nelle fonti consiliari (secoli XIV–XVI)* (Pavia, 1999)
- Luzzati, M., *La casa dell'Ebreo: Saggi sugli Ebrei a Pisa e in Toscana nel Medioevo e nel Rinascimento* (Pisa, 1985)
- Manikowska, H., '“Accorr' uomo”: il popolo nell'amministrazione della giustizia a Firenze durante il xiv secolo', *Ricerche storiche*, 18 (1988)
- Martin, H., *Mentalités médiévales XIe–XVe siècle* (2nd edn, Paris, 1998)
- Martines, L., *An Italian Renaissance Sextet: Six Tales in Historical Context* (New York, 1994)
- 'The Italian Renaissance tale as history', in *Languages and Images of Renaissance Italy*, ed. A. Brown (Oxford, 1995)
- 'Séduction, espace familial et autorité dans la Renaissance italienne', *Annales* 53 (1998)
- Martines, L. (ed.), *Violence and Civil Disorder in Italian Cities, 1200–1500* (Berkeley, 1972)
- Martini, G., 'Sodomia e discriminazione morale a Venezia nei secoli xv–xvii: tendenze evolutive', *Atti dell'Istituto veneto di scienze, lettere ed arti*, 145 (1986–7)
- Mauguin, G., *Mœurs italiennes de la Renaissance: la vengeance* (Paris, 1935)
- Mazzarese Fardella, E., 'Aspetti della legislazione di Federico III d'Aragona re di Sicilia', *Archivio storico siciliano*, 4th ser., 23 (1997)
- Mazzotta, G., *The World at Play in Boccaccio's Decameron* (Princeton, 1986)
- Medeiros, M.-T. de, *Jacques et chroniqueurs* (Paris, 1979)
- Meek, C., *The Commune of Lucca under Pisan Rule, 1342–1369* (Cambridge, Mass., 1980)
- 'Il tempo di Giovanni Sercambi', in *Giovanni Sercambi e il suo tempo* (Lucca, 1991)
- 'Men, women and magic: some cases from late medieval Lucca', in *Women in Renaissance and early modern Europe*, ed. C. Meek (Dublin, 2000)
- Miglio, M., 'Cultura e società nel Novellino', in *Masuccio novelliere salernitano dell'età aragonese*, ed. P. Borraro and F. D'Episcopo (Galatina, 1978)
- 'La novella come fonte storica: cronaca e novella dal Compagni al Pecorone', in *La novella italiana* (Rome, 1989)
- Migliorino, F., 'Un “consilium” di Guglielmo Perno per un processo di magia in Sicilia', *Quaderni catanesi di studi classici e medievali*, 2 (1980)
- Mitchell, C., 'Sacchetti and Bartolus', *Bibliothèque d'Humanisme et de Renaissance*, 14 (1952)
- Morash, M., *Understanding Gender, Crime and Justice* (Thousand Oaks, 2006)
- Mormando, F., *The Preacher's Demons: Bernardino of Siena and the Social Underworld of Early Renaissance Italy* (Chicago, 1999)
- Muchembled, R., *La sorcière au village (XVe–XVIIIe siècle)* (n.p., 1979)
- Musson, A. (ed.), *Expectations of the Law in the Middle Ages* (Woodbridge, 2001)

- Muzzarelli, M. G., 'Gli ebrei a Cesena nel xv secolo', *Studi romagnoli*, 20 (1979)
- 'Luoghi e tendenze dell'attuale storiografia italiana sulla presenza ebraica fra xiv e xvi secolo', *Società e storia*, 24 (1984)
- Nicholas, B., *An Introduction to Roman Law* (Oxford, 1962)
- Nicolini, U., 'La stregoneria a Perugia e in Umbria nel Medioevo', *Bolletino della Deputazione di storia patria per l'Umbria*, 84 (1975)
- Nigro, S. S., *Le brache di San Grifone: novellistica e predicazione tra '400 e '500* (Rome and Bari, 1989)
- Ortalli, G., 'Cronache e documentazione', in *Civiltà comunale: libro, scrittura, documento* (Genoa, 1989)
- Otis, L., 'Une contribution à l'étude du blasphème au bas Moyen Age', in *Diritto comune e diritti locali nella storia dell'Europa* (Milan, 1980)
- Papio, M., *Keen and Violent Remedies: Social Satire and the Grotesque in Masuccio Salernitano's Novellino* (New York, 2000)
- Pasciuta, B., *In regia curia civiliter convenire: Giustizia e città nella Sicilia tardo-medievale* (Turin, 2003)
- Pastore, R., 'Per una interpretazione del Novellino di Masuccio salernitano', in *Cultura neolatina*, 29 (1969)
- Paton, B., "'To the fire, to the fire! Let us burn a little incense to God": Bernardino, preaching friars and maleficio in late medieval Siena', in *No Gods Except Me: Orodoxy and Religious Practice in Europe, 1200–1600*, ed. C. Zika (Melbourne, 1991)
- Pazzaglini, P. R., and C. A. Hawkes, *Consilia: A Bibliography of Holdings in the Library of Congress and Certain Other Collections in the United States* (Washington, 1990)
- Pene, G. S., 'Vicende della legislazione statutaria in Ivrea', *Bollettino storico-bibliografico subalpino*, 62 (1964)
- Pene Vidari, G. S., 'Sulla criminalità e sui banni del comune di Ivrea nei primi anni della dominazione sabauda (1313–1347)', *Bollettino storico-bibliografico subalpino*, 68 (1970)
- Pennington, K., 'The consilia of Baldus de Ubaldis', *Tijdschrift voor Rechtsgeschiedenis*, 56 (1988)
- Pertile, A., *Storia del diritto italiano* (6 vols., Turin, 1896–1903)
- Piergiovanni, V., *Gli statuti civili e criminali di Genova nel Medioevo* (Genoa, 1980)
- 'Statuti e riformazioni', in *Civiltà comunale: libro, scrittura, documento* (Genoa, 1989)
- Pieri, B., 'Ricerche sui consilia di Alessandro Tartagni', *Studi parmensi*, 44 (1999)
- Pignatti, F., 'I "Motti e facezie del piovano Arlotto" e la cultura del Quattrocento', *Giornale storico della letteratura italiana*, 176 (1999)
- Pluss, J. A., 'Baldus of Perugia on female and male: the case of Alumella', *Thought* 64 (1989)
- Po-Chia Hsia, R., *Trent 1475: Stories of a Ritual Murder Trial* (New Haven, 1992)

- Pontieri, E., *La Calabria a metà del secolo XV e le rivolte di Antonio Centelles* (Naples, 1963)
- Povolo, C., 'Contributi e ricerche in corso sull'amministrazione della giustizia nella repubblica di Venezia in età moderna', *Quaderni storici*, 44 (1980)
- Prosperi, A., 'Il sangue e l'anima: ricerche sulle compagnie di giustizia in Italia', *Quaderni storici*, 51 (1982)
- Puccini, C., 'La tortura: storia del dolore umano tra diritto e medicina', *Università degli studi, Macerata. Annali della facoltà di giurisprudenza*, 1993–4
- Pythian-Adams, C., 'Rituals of personal confrontation in late-medieval England', *Bulletin of the John Rylands Library*, 73 (1991)
- Quagioni, D., 'Gli ebrei nei consilia del Quattrocento veneto', in *Consilia im späten Mittelalter*, ed. I. Baumgärtner (Sigmaringen, 1995)
- Quaglion, D. and A. Esposito, 'I processi contro gli ebrei di Trento', in *La parola all'accusato*, ed. J.-C. Maire Vigueur and A. Paravicini Bagliani (Palermo, 1991)
- Reiner, R., S. Livingstone and J. Allen, 'From law and order to lynch mobs: crime news since the Second World War', in *Criminal Visions: Media Representations of Crime and Justice*, ed. P. Mason (Cullompton, 2003)
- Ricœur, P., *La mémoire, l'histoire, l'oubli* (Paris, 2000)
- Roberts, A., 'Violence against women and the habits of thought', in *Violence against Women in Medieval Texts*, ed. A. Roberts (Gainesville, 1998)
- Rocke, M., *Forbidden Friendships: Homosexuality and Male Culture in Renaissance Florence* (Oxford, 1996)
- Romanello, M. (ed.), *La stregoneria in Europa (1450–1650)* (Bologna, 1975)
- Romano, A., 'Tribunali, giudici e sentenze nel "Regnum Siciliae" (1130–1516)', in *Judicial Records, Law Reports and the Growth of Case Law*, ed. J. H. Baker (Berlin, 1989)
- Romano, D., 'Quod sibi fiat gratia: adjustment of penalties and the exercise of influence in early Renaissance Venice', *Journal of Medieval and Renaissance Studies*, 13 (1983)
- Housecraft and Statecraft: Domestic Service in Renaissance Venice, 1400–1600* (Baltimore, 1996)
- Roque Ferer, R., 'L'infrazione della legge a Cagliari dal 1340 al 1380', *Quaderni sardi di storia*, 5 (1985–6)
- Rossi, G., '"Processus de causis civilibus et criminalibus": formulario bolognese del secolo XIII', *Studi urbinati: scienze giuridiche ed economiche*, 31 (1962–3)
- Rossi, V., 'Caio Calorio Ponzio e la poesia volgare letteraria di Sicilia nel secolo XV', *Archivio storico siciliano*, n.s., 18 (1893)
- Rubin, M., *Gentile Tales: The Narrative Assault on Late Medieval Jews* (New Haven and London, 1999)
- Ruggiero, G., *Violence in Early Renaissance Venice* (New Brunswick, 1980)
- 'Excusable murder: insanity and reason in early Renaissance Venice', *Journal of Social History*, 16 (1982–3)
- The Boundaries of Eros: Sex Crime and Sexuality in Renaissance Venice* (New York and Oxford, 1985)

- Ruiz-Domenec, J. E., 'Littérature et société médiévale: vision d'ensemble', *Moyen Age*, 88 (1982)
- Ryder, A., 'The incidence of crime in Sicily in the mid fifteenth century: the evidence from composition records', in *Crime, Society and the Law in Renaissance Italy*, ed. T. Dean and K. J. P. Lowe (Cambridge, 1994)
- Salvioli, G., *Storia della procedura civile e criminale*, in *Storia del diritto italiano*, ed. P. Del Giudice, vol. 3, pt 2 (Milan, 1927)
- Salwa, P., 'Fiction e realtà: novella come fonte storica', *I Tatti Studies*, 1 (1985)
- Santoro, C., 'Per la storia dell'amministrazione della giustizia a Milano', in eadem, *Scritti rari e inediti* (Milan, 1969)
- Sbriccoli, M., *L'interpretazione dello statuto: contributo allo studio della funzione dei giuristi nell'età comunale* (Milan, 1969)
- “Tormentum idest torquere mentem”. Processo inquisitorio e interrogatorio per tortura nell'Italia comunale', in *La parola all'accusato*, ed. J.-C. Maire Vigueur and A. Paravicini Bagliani (Palermo, 1991)
- 'Nox quia nocet: i giuristi, l'ordine e la normalizzazione dell'immaginario', in *La notte: ordine, sicurezza e disciplinamento in età moderna*, ed. M. Sbriccoli (Florence, 1991)
- 'Giustizia negoziata, giustizia egemonica. Riflessioni su una nuova fase degli studi di storia della giustizia criminale', in *Criminalità e giustizia in Germania e in Italia: Pratiche giudiziarie e linguaggi giuridici tra tardo medioevo ed età moderna*, ed. M. Bellabarba, G. Schwerhoff and A. Zorzi (Bologna, 2001)
- Scovazzi, I., and F. Noberasco, *Storia di Savona* (3 vols., Savona, 1926–8)
- Seidel Menchi, S., 'I processi matrimoniali come fonte storica', in *Coniugi nemici: La separazione in Italia dal XII al XVIII secolo*, ed. S. Seidel Menchi and D. Quaglioni (Bologna, 2000)
- Sempoux, A., *La nouvelle* (Turnhout, 1973)
- Sheedy, A. T., *Bartolus on Social Conditions in the Fourteenth Century* (New York, 1942)
- Sidky, H., *Witchcraft, Lycanthropy, Drugs and Disease: An Anthropological Study of the European Witch-Hunts* (New York, 1997)
- Sighinolfi, L., *La signoria di Giovanni da Oleggio in Bologna (1355–1360)* (Bologna, 1905)
- Simon, A., *Le novelle e la storia: Toscana e Oriente fra Tre e Quattrocento* (Rome, 1999)
- 'Novellistica e storia nel Medioevo: una proposta di lettura (*Decameron*, II.7)', in *Favole parabole istorie: le forme della scrittura novellistica dal Medioevo al Rinascimento*, ed. G. Albanese, L. Battaglia Ricci and R. Bessi (Rome, 2000)
- Stern, L. I., *The Criminal Law of Medieval and Renaissance Florence* (Baltimore and London, 1994)
- Strohm, P., *Hochon's Arrow: The Social Imagination of Fourteenth-century Texts* (Princeton, 1992)
- Titone, F., 'Il tumulto *popularis* del 1450: conflitto urbano e società urbana a Palermo', *Archivio storico italiano*, 163 (2005)

- Toaff, A., *Il vino e la carne: una comunità ebraica nel Medioevo* (Bologna, 1989)
The Jews in Umbria (Leiden, 1993)
- Tosh, J., 'Hegemonic masculinity and gender history', in *Masculinities in Politics and War: Gendering Modern History*, ed. S. Dudink, K. Hagemann and J. Tosh (Manchester, 2004)
- Trasselli, C., *Siciliani fra Quattrocento e Cinquecento* (Messina, 1981)
- Vallerani, M., 'Conflitti e modelli procedurali nel sistema giudiziario comunale: i registri di processi di Perugia nella seconda metà del XIII secolo', *Società e storia*, 48 (1990)
- 'L'amministrazione della giustizia a Bologna in età podestarile', *Atti e memorie della Deputazione di storia patria per le provincie modenese*, n.s., 43 (1992)
- La giustizia pubblica medievale* (Bologna, 2005)
- Varvaro, A., 'Tra cronaca e novella', in *La novella italiana* (Rome, 1989)
- Vasina, A., 'Medieval urban historiography in Western Europe (1100–1500)', in *Historiography in the Middle Ages*, ed. D. Mauskopf Deliyannis (Leiden and Boston, 2003)
- Verga, E., 'Le sentenze criminali dei podestà milanesi 1385–1429', *Archivio storico lombardo*, 3rd ser., 16 (1901)
- Veronese, A., 'Per la storia della presenza ebraica in Toscana: tre processi volterrani contro un medico ebreo', *Bollettino storico pisano*, 60 (1991)
- Watt, I., 'Literature and society', in *The Arts in Society*, ed. R. N. Wilson (Englewood Cliffs, NJ, 1964)
- Weinstein, D., 'Fighting or flying? Verbal duelling in mid-sixteenth-century Italy', in *Crime, Society and the Law in Renaissance Italy*, ed. T. Dean and K. J. P. Lowe (Cambridge, 1994)
- Wickham, C., *Legge, pratiche e conflitti: tribunali e risoluzione delle dispute nella Toscana del XII secolo* (Rome, 2000)
- Wodak, R., 'The discourse-historical approach', in *Methods of Critical Discourse Analysis*, ed. R. Wodak and M. Meyer (London, 2001)
- Wolftal, D., *Images of Rape: The 'Heroic' Tradition and its Alternatives* (Cambridge, 1999)
- Zanelli, A., *Le schiave orientali a Firenze nei secoli XIV e XV* (Florence, 1885)
- Zdekauer, L., 'La condanna di una strega (1250)', *Bollettino storico pistoiese*, 26 (1924)
- Zeremška, H., *Les bannis au Moyen Age* (Paris, 1996)
- Zordan, G., *Il diritto e la procedura criminale nel Tractatus de maleficiis di Angelo Gambiglioni* (Padua, 1976)
- Zorzi, A., *L'amministrazione della giustizia penale nella repubblica fiorentina: aspetti e problemi* (Florence, 1988)
- 'Giustizia criminale e criminalità nell'Italia del tardo medioevo: studi e prospettive di ricerca', *Società e storia*, 46 (1989)
- 'Rituali di violenza giovanile nelle società urbane del tardo Medioevo', in *Infanzie: funzioni di un gruppo liminale dal mondo classico all'Età moderna*, ed. O. Niccoli (Florence, 1993)

- 'Le esecuzioni delle condanne a morte a Firenze nel tardo medioevo tra repressione penale e cerimoniale pubblico', in *Simbolo e realtà della vita urbana nel tardo Medioevo*, ed. M. Miglio and G. Lombardi (Rome, 1993)
- 'The judicial system in Florence in the fourteenth and fifteenth centuries', in *Crime, Society and the Law in Renaissance Italy*, ed. T. Dean and K. J. P. Lowe (Cambridge, 1994)
- 'Conflits et pratiques infrajudiciaires dans les formations politiques italiennes du xiii^e au xve siècle', in *L'infrajudiciaire du Moyen Age à l'époque contemporaine*, ed. B. Garnot (Dijon, 1996)
- 'La politique criminelle en Italie (xiii^e–xviii^e siècles), *Crime, histoire et sociétés*, 2:2 (1998)
- Zorzi, E., 'Il furto nella dottrina e nella legislazione veneta', *Atti dell'Istituto veneto di scienze, lettere ed arti*, 95 (1935–6)

Index

- accidental wounding/homicide, 27, 32
- adultery
 - consilium* on, 108
 - in Venice, 135
 - law on, 88, 138
 - marital violence against adulterous wives, 68–9
 - prosecutions of in Bologna and Lucca, 41, 43
- Anania, Johannes de, *consilia*
 - on Jews and stolen goods, 99
 - on torture, 107
- Ancharano, Petrus de, *consilia*
 - on domestic violence, 176
 - on individual and shared criminal responsibility, 101
 - on Jewish offence against Christian religion, 147
 - on stone-throwing games, 98
- Arezzo
 - penalties for violence in, 172
 - statute on insult in, 117
 - statute on theft in, 192
- Arienti, Sabadino degli, 79–81, 82, 117, 177, 179
- assassination
 - consilia* on, 103–4
 - law on, 103
- Asti
 - penalties for violence in, 172–3, 174
- Baldus de Ubaldis
 - on admissible testimony, 108
 - on hanging, 65
 - consilia*
 - on accidental killing, 100
 - on assassination, 103
 - on blasphemy, 120
 - on delayed death from wounds, 102
 - on domestic violence, 99
 - on duelling, 180
 - on killing of bandits, 105, 106–7
 - on individual and shared criminal responsibility, 101
 - on non-culpable homicide, 100–1
 - on prosecution for extra-territorial crime, 102–3
 - on rape, 139
 - on revenge, 126, 128
 - on penalty for multiple offences, 108
 - on theft outside the jurisdiction, 192
 - on use of torture, 107
- banditry, in *consilia*, 104–7
- Bargello
 - outline of role, 11
 - in Bologna, 40, 54
 - in Florence, 53–4
 - in Rome, 54
 - in Siena, 54
- Barletta, tale of king's chamberlain and local maiden of, 61
- Bartolus
 - on duelling, 196
 - on eye-witness testimony, 107–8
 - consilia*
 - on adultery, 108
 - on bandit-killing and revenge, 128
 - on fingers, 173
 - on injury to bandits, 104–5
 - on insult, 116–17
 - on pardon for blasphemy, 99
- Belluno, statute on limbs in, 173
- Bergamo
 - statute on blasphemy in, 120
 - statute on theft in, 192
- Black Death, 150, 165–6, 184, 188; *see also* plague
- blasphemy, 43, 46, 48, 49, 61–2, 119–21
 - consilium* on 265, 108
- Bloch, Marc, 2, 6–7, 202
- Boccaccio, Giovanni, *Decameron*
 - VIII.5, 76
 - III.5, 76
 - III.7, 76

Boccaccio, Giovanni, *Decameron* (cont.)

- IV.3, 76, 77
- IV.10, 76, 77
- IV.7, 138
- VIII.7, 163
- IX.5, 163
- IV.9, 177

Bologna

- Bargello of, 40, 54
- commutation of penalty for sodomy in, 59–60
- company of justice in, 62
- crimes in, 29–31, 32
- evolution of capital punishment in, 63, 65
- execution of witches in, 164
- law on the relation between accusation and inquisition, 23
- pattern of prosecutions in, 37–43
- Podestà of, 56
- popular justice in, 58
- prosecution of a Jew for sex with a Christian in, 146–7
- prosecutions of rape and adultery in, 140–1, 170
- prosecution of revenge in, 130–1
- prosecution of sorcery in, 155–6
- prosecution of sodomy in, 143
- San Petronio, 195
- statute on theft in, 183
- statutes of, 84
- types of prosecuted violence in, 169–70, 171
- violence by servants in, 69
- violence by soldiers in, 169–70
- see also Ludovico Bolognini, *consilia*

Bolognini, Ludovico, *consilia*

- on assassination, 103–4
- on bandit-killing and revenge, 129
- on delayed death from wounds, 102
- on killing a pimp, 98, 174–5
- on killing of bandits, 105

boys, see children

Bracciolini, Poggio, 76, 77, 82, 179

breadknife, is it a weapon? 512

Calcanus, Laurentius, *consilia*

- on duelling, 180
- on sodomy, 98
- on theft

Calderinis, Gaspar de, *consilium* on fornication and infamy, 99

Camerino, statute on revenge in, 129

Capitano del Popolo

- in Lucca, 45–6
- outline of role of, 11

Cascina, malicious prosecution in, 21

Castel San Pietro, homicide in, 27–8

Castro, Paulus de, *consilia*

- on attempted rape, 98–9
 - on homicide, 100
 - on killing of bandits, 105
 - on husband's killing of wife's lover, 121–2
 - on bandit-killing and revenge, 129
 - on poisoning, 156–7
- Cepolla, Bartolomeo, *consilia*
- on assassination, 104
 - on assisted crime, 102
 - on a woman who poisoned her bandit husband, 98–9
 - on death caused in a stone-throwing game, 100
 - on killing of bandits, 105, 106
 - on multiple offences, 108
 - on revenge and self-defence, 127
 - on theft by a servant, 189
 - on theft outside the jurisdiction, 192

Cesena

- decrees in, 85
- statute on blasphemy in, 120
- statute on insult in, 118
- statutes on physical injury in, 172
- statute on revenge in, 129
- statute on sodomy in, 142
- statutes on sorcery and poisoning in, 158

Chieri, revenge in, 128

children

- boys' stone-throwing games, 98, 100
- criminal responsibility of, 27, 32, 45
- involvement in popular justice, 58, 59
- theft of, 29–30

Chiusi, insult in, 116–17

Città di Castello

- Jew visits a brothel in, 148–9
- sexual misbehaviour of Podestà of, 56

Cohn, Sam, 5, 8

- his critique of work by Rocke, 144–5

composition of crime, 89

contumacy, 86, 87, 92

Corleone, 'customs' regarding prostitution in, 152

counterfeit coins, 29

Deruta, statute on blasphemy in, 120, 121

door-scorning, 122–3

duelling, 177–81

Fabrizio

- statute on blasphemy in, 120
- statute on insult in, 118
- statute on the infamous in, 174
- statute on violence in, 172–3

fama (repute), proof by, 87, 93

- Farge, Arlette, 2–3, 4, 28
- Ferrara
- duels in, 178–9, 180
 - executions in (1445, 1476, 1480), 65, 66
 - rapacious Captain of Justice of, 56
 - undue imprisonment in, 21
 - unemployment and theft in, 68
- Florence
- bargello of, 53–4
 - execution in, 64
 - food shortage and theft in, 68
 - law on the relation between accusation and inquisition in, 23–4
 - law on the trafficking of women in the sex-trade in, 153
 - malicious prosecution in, 21–2
 - Otto di Guardia in, 12
 - penalties for violence in, 172
 - Podestà of, 55
 - popular lynchings in, 57–8
 - prosecution of sodomy in, 144–6
 - prosecution of sorcery in, 160, 161
 - revenge in, 126
 - statute on insult in, 118
 - statute on sodomy in, 142
 - statutes on sex with slaves in, 151
- Forlì
- duels in, 178
 - pardons in, 60
 - Podestà of, 55–6
- Gambiglioni, Andrea, 23
- gambling
- as *fons et origo* of evils, 88
 - laws on, 85
 - miraculous punishment of, 61
- Gandinus, Albertus (Gandino), 23, 102, 103, 107, 108, 125, 191
- Gauvard, Claude, 5, 8
- Genoa
- statutes on sex with slaves, 151
 - statutes on sorcery and poisoning, 158
- Giovanni di maestro Pedrino, chronicler, 50, 60, 176, 178
- homicide
- accidental, 27, 32
 - law on, 85–6, 100–4
 - see also Baldus; Bartolus; Bolognini, Ludovico; Castro, Paulus de; Cepolla, Bartolomeo; Ubaldis, Angelus de
- Homodeis, Signorolus de, *consilia*
- on assisted crime, 102
 - on breaches of private pacification, 127
 - on killing of bandits, 105
 - on miscarriage caused by wife-battering, 98
 - hunting, protection of reserves, 49–50
- insanity, and criminal responsibility, 27, 100
- ius commune*, 109
- Jews
- and desecration of host, 149
 - and sex with Christians, 136, 146–50
 - and stolen goods, 99, 194, 196
 - as pollutants, 88
 - as victims of Christian violence, 65
 - impersonated, 161, 162–3
 - sodomites, 143
 - suspected of sorcery, 160
- L'Aquila, law on prostitution in, 153
- Law and Literature, 70, 72, 86, 91
- lex Aquilia*, 91, 100–1
- lex Cornelia de sicariis et veneficis*, 101, 104, 158
- Lucca
- attempted prosecution of rape in, 25
 - cases of sodomy in, 142–3
 - killing of Lazzaro Guinigi in, 130
 - malicious prosecution in, 21
 - pattern of prosecutions in, 43–7
 - prosecution of a Jew for sex with a Christian prostitute in, 147
 - prosecutions of rape and adultery in, 140
 - prosecution of revenge in, 130–1
 - prosecution of sorcery in, 160, 161
 - statute on blasphemy in, 120
 - statute on insult in, 118
 - statute on sodomy in, 142
 - statutes on sex with slaves in, 151
 - statutes on sorcery and poisoning in, 157
 - types of prosecuted violence in, 169, 171
 - use of attorneys in trials in, 26
 - wife-battering in, 175–6
- Malatesta, see Cesena; Rimini
- Mantua
- consilium* on revenge in, 121
 - pattern of prosecutions in, 47–50
- Martines, Lauro, 73, 74, 75
- Mary, Saint
- crimes on feast days of, 98
 - exculpating value of devotion to, 66
 - insults against, 27, 61, 120, 152
- Masuccio Salernitano, see Salernitano, Masuccio
- Matteuccia, with, 163–4
- Messina
- 'custom' on judicial combat in, 177
 - law on killing of adulterous wives in, 175
- microhistory, 5–6, 203

- Milan
 executions in, 64
 judicial records, 47
 law on sexual relations of Christians and Jews, 148
 law on traffic in women for prostitution, 153
 popular justice in, 59
 miracles, 61
- Modena
 cross-border conflict near, 21
 popular justice in, 59
 statute on insult in, 118
- Monferrato, marquis of, 89
- Montaillou, 4, 31
- Montone, 9
- Naples, city of, 64
 duels in, 27
- Naples, king of
 law on the trafficking of women in the sex-trade, 153
 on accusers who renounce their claims, 89
- Naples, kingdom of
 outline of criminal justice system, 12–13
 'ne crimina remaneant impunita', 87, 89, 90
- nocturnal crimes, 172, 173
- Padua
 duels in, 178
 law on prostitution in, 153
 law on sexual relations of Christians and Jews in, 148
 prosecution for poisoning in, 156
 statute on blasphemy in, 120
 statute on insult in, 117
 statute on intruders in, 174
 statute on violence in, 172–3
- Palermo, 25
 'custom' on duelling in, 177
 'custom' regarding prostitution in, 152
 grain riot in, 67–8
 insult case (1328) in, 115–16
 law on revenge in, 129
- Parma
 popular justice in, 58, 59
 statute on judicial combat, 177
 torture in, 56–7
- pathology of crime, 88
- Perugia
 death from torture in, 57
 duels in, 177, 179
 execution in, 66
 killing of adulterous women in, 69
 lack of justice in, 69
 law on the relation between accusation and inquisition, 23
 penalties for violence in, 172
 prosecutions of sorcery in, 159–60, 161
 revenge narratives in chronicles of, 131–2
 statute on bandit-killing in, 105
 statute on sex between Jews and Christians in, 148
 statute on sodomy in, 142
 statutes on judicial combat and duel in, 177
 tax demands and theft in, 68
- Petrucchi, Fredericus de, *consilia*
 on doubling of penalty on feast days, 98
 on killing of bandits, 105
- Piedmont
 laws on sorcery and poisoning in, 157
 punishment of sorcery in, 165
- pimp, *see* prostitution
- Piovan Arlotto, il, 77, 82
- Pisa, execution in, 64–5
 and insult, 117
- Pistoia, revenge in, 132
- plague, 188
- Podestà
 descriptions of in Siennese chronicles, 55
 outline of role of, 11
 representation of in literature, 76–7
 sexual predations of, 55–7
- poisoning, 25, 30, 64, 70, 72, 156–8
- Pontanis, Ludovicus de, *consilia*
 on assistance of homicide, 98
 on breaches of private pacification, 127
- preaching
 and Jewish-Christian relations, 150
 and sex crime, 137
 and sorcery, 160, 164
- prostitution, 137, 147, 151–4
 as disease, 88
 as public danger, 33, 88
 impunity of killing a pimp, 174–5
 permitted violence against prostitutes, 174
- punishment
 corporal, 36–7, 48, 49, 198–9
 by money fine, 36, 45, 198–9
 death, 38, 45, 48, 49, 198–9
 deterrent effect of, 90
 display of body-parts in, 62–5
- rape, 138–40
 difficulty of bringing accusation, 25
 in Bologna, 41–2
 in fiction, 79–81
 in Mantua, 48
 of slaves, 35–6
 tactics of defendants in trials, 26–7

- Ravenna
 law on prostitution in, 153
 law on sexual relations of Christians and Jews in, 148
 statutes of, 92
- Reggio
 statute on revenge in, 129
 violence in, 170
- repute, *see fama*
- revenge, *see vendetta*
- Rimini, decree on blasphemy in, 119
- Rocke, Michael, 144–5
- Rome
 bargello of, 54
 duel in, 178
 executions in, 64, 65
 food shortage and theft in, 68
 lack of justice in, 69
 torture in, 190
- Ruggiero, Guido, 9
 critique of works by, 97, 135–8
- Sacchetti, Franco, 76, 77, 82, 117, 163, 179, 182, 196
- Salernitano, Masuccio, 79–81, 177, 179
- San Bernardino of Siena, 138, 164
- Savona, 34
 insult in, 35, 36, 113–15, 117, 119
 pattern of prosecutions in, 34–7
 prosecution of sodomy in, 36, 143
- Savoy, duke of
 decree on blasphemy by, 119, 120
 law on prostitution by, 153
 law on the trafficking of women in the sex-trade, 153
 punishment of sorcery by, 165
- scarring, 173
- Sercambi, Giovanni, 59, 76, 77–81, 177, 182
- servants, 29, 46, 63, 64, 65, 67, 69, 158, 170, 171, 188–9, 196, 197
- Sicily
 execution of a traitor in, 59
 explanation of rising crime in, 9
 Jews and sexual offences in, 148
 law on sorcery and poisoning in, 157
 outline of criminal justice system of, 13
 prosecution of sodomy in, 143
- Siena
 bargello of, 54
 decapitation in, for phallus-painting, 122
 evolution of capital punishment in, 63–4, 66
 in a *consilium* of Baldus, 102–3
 Podestà of, 55
 statute on sodomy in, 141–2
 statutes on sex with slaves in, 151
- slaves, 161, 193
 and sex crimes, 136, 137, 143, 150–1
- sodomy, 137, 141–6
 as disease, 88
 associated with blasphemy, 119–20
 cases of, 36, 37, 142–3
 commutation of penalty for, 59–60
consilium on, 98
 in Bologna, 143
 in Florence, 144–6
 in Venice, 136, 141, 146
 law on, 141–2
 malicious denunciation of, 21–2
 penalties for, 141–2
- sorcery
 as disease, 88
 in fiction, 163
 its character and evolution, 155–6, 157–63
- Spinelli, Matteo, 61
- Spoleto
 statute on revenge, 129
- Tartagni, Alessandro, 97
consilia
 on criminous clerics, 99
 on excessive self-defence, 126
 on individual and shared criminal responsibility, 101
 on killing of bandits, 106
 on theft by a servant, 189
- theft
 cases of, 39, 46
 extra-territorial prosecution of, 93
- Todi, *see Matteuccia*
- Torcello, violence in, 168
- torture, 25, 56–7
consilia on, 107
 deaths on the rope, 57
 in fiction, 76
 of thieves, 25, 189–91
- Treviso, in *consilia* of B. Cepolla, 102, 105
- Turin, 9
- Ubaldis, Angelus de, *consilia*
 on assistance to homicide, 98
 on bandit-killing and revenge, 128–9
 on duelling, 180
 on extra-territorial homicide, 103
 on killing of bandits, 106
 on robbery, 191
- Ubaldis, Petrus de, *consilium* on Jew visiting brothel, 148–9
- Urbino
 popular rising in (1322), 57

- vagabonds, 29, 143, 146, 162, 186, 192, 195
- vendetta, 21, 123–32
 - and conflict resolution, 20
 - consilia* on, 126–9
 - in chronicles, 67
 - in fiction, 82
 - non-vindictive nature of statute law, 90–1
 - law on, 129–30
 - prosecution of, 130–1
 - women and, 22
- Venice
 - and Roman law, 97
 - law of on sexual relations of Christians and Jews, 148
 - outline of criminal justice system of, 12
 - prosecution of sorcery in, 160
 - sex crimes in, 135–8
 - sodomy in, 141, 146
 - statutes on sex with slaves in, 151
- Verga, E., 9, 18
- Verona
 - law on prostitution in, 152, 153
 - status of regional law of, 105, 106
 - statute on blasphemy in, 120
- Visconti, lords/dukes of Milan
 - Bernabò, decree on assisted crime, 102
 - Bernabò in fiction, 79, 81
 - decrees of, 85
 - decrees of on avoidance of penalty, 89
 - Galeazzo's decree on blasphemy, 120
 - Giangaleazzo and legal consultants, 108
- wife-battering, 26, 43, 45, 99, 163, 174, 175–6
- wife-killing, 28
 - cases of, 176–7
 - in fiction, 177
- witch-craft, 163
- Zorzi, Andrea, 4–5, 8, 9, 59, 84, 124